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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-315

Filed 6 February 2024

Mecklenburg County, Nos. 19 CRS 246111; 246113; 246114

STATE OF NORTH CAROLINA

v.

CARLTON STEVON BENBOW

Appeal by Defendant from Judgment entered 28 September 2022 by Judge Kimberly Y. Best in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 October 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Benjamin Szany, for the State.

Blass Law, PLLC, by Danielle Blass, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural History

Carlton Benbow (Defendant) appeals from Judgment entered pursuant to jury verdicts finding Defendant guilty of Voluntary Manslaughter and Assault with a Deadly Weapon with Intent to Kill. The Record before us, including the evidence presented at trial, tends to show the following:

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Defendant lived in an apartment complex in Charlotte, North Carolina. The victim in this case was Reginald Lawrence. In November 2019, Lawrence, his wife, and several of their children were visiting a relative for Thanksgiving. The family stayed with their relative, who lived in an apartment in the same building as Defendant. On the evening of 29 November 2019, some of the family, including Lawrence, were outside in the parking lot playing music from their rental van. They claimed a series of encounters with Defendant ultimately resulted in Defendant shooting and killing Lawrence.

First, Defendant walked a dog past the family's van while they were gathered in the parking lot. After a brief, cordial conversation, Defendant left to take the dog inside. Defendant then came back outside, asked where the family was from, and suddenly became angry. Defendant left again and went back up to an apartment, but he returned a few minutes later. He then began yelling at Lawrence and making aggressive statements towards Lawrence's wife and one of the children. At this point, one of the children ran inside and came back out with scissors and a grill skewer. During this time, the argument between Defendant and Lawrence escalated, and the two wrestled before Defendant pulled out a gun and shot Lawrence. One of Lawrence's children then began wrestling with Defendant on the ground and another attempted to intervene with the scissors and grill skewer. Defendant pointed the gun at Lawrence's daughter who was holding the scissors and attempted to fire, but the gun jammed. Defendant's family then came outside and finally broke up the

altercation.

Defendant then called his friend who picked him up and brought Defendant back to the friend's apartment. The friend took photos of Defendant's facial injuries and took Defendant to the hospital. When Defendant was discharged from the hospital early the next morning, a police officer asked him if he would come to the police station and talk to a detective. Defendant agreed and was driven to a police station. After interrogation, Defendant was arrested that morning.

On 30 November 2022, Defendant was arrested and charged with Possession of a Firearm by a Felon, Assault with a Deadly Weapon with Intent to Kill, and First-Degree Murder. At trial, Defendant raised the affirmative defense of self-defense, arguing Lawrence attacked him and Defendant shot Lawrence while in fear for his life.

At trial, during the jury charge conference, the parties and trial court reviewed draft jury instructions. The pattern jury instruction for first-degree murder and voluntary manslaughter—N.C.P.I.—Crim. 206.10—includes a self-defense instruction. The pattern instructions contained N.C.P.I.—Crim. 308.10 by reference in a footnote, which is titled “Self-Defense, Retreat—Including Homicide.” N.C.P.I.—Crim. 206.10 (2019). Defendant did not specifically request N.C.P.I.—Crim. 308.10 nor object to its absence.

During jury instructions, the trial court stated:

The defendant would be excused of first-degree murder. . . on the

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ground of self-defense if: First, the defendant believed it was necessary to kill Reginald Lawrence in order to save the defendant from death or great bodily harm.

And, second, the circumstances as they appeared to the defendant at the time were sufficient to create such a belief in the mind of a person of ordinary firmness.

. . . .

The defendant would not be guilty of any murder or manslaughter if the defendant acted in self-defense and if the defendant was not the aggressor in provoking the fight and did not use excessive force under the circumstances.

. . . .

Furthermore, the defendant has no duty to retreat in a place where the defendant has a lawful right to be.

. . . .

And, finally, if the [S]tate has failed to satisfy you beyond a reasonable doubt that the defendant did not act in self-defense, that defendant was the aggressor, or that the defendant used excessive force, then the defendant's actions would be justified by self-defense and it would be your duty to return a verdict of not guilty.

After sending the jury out to select a foreperson, the trial court asked the parties whether they had "any additional corrections or additions to the jury instructions[.]" Defendant did not.

The jury found Defendant guilty of Possession of a Firearm by a Felon and Assault with a Deadly Weapon with Intent to Kill; however, the jury rejected the First-Degree Murder charge and instead convicted Defendant of the lesser-included

offense of Voluntary Manslaughter. The trial court consolidated the three convictions into one Judgment. The jury verdict forms, Judgment, and prior record worksheet are all dated 29 September 2022; however, the file stamp on each indicates all were filed 28 September 2022. Defendant was sentenced to 67 to 93 months of imprisonment. Defendant gave oral Notice of Appeal in open court on 29 September 2022.

Issue

The sole issue on appeal is whether the trial court properly instructed the jury on self-defense without substantially deviating from the parties agreed-upon instructions by not including the stand-your-ground pattern instruction when it was incorporated by reference in the agreed-upon instructions.

Analysis

Defendant contends the trial court substantially deviated from the North Carolina Pattern Jury Instruction on voluntary manslaughter because it did not repeat the stand-your-ground instruction, which is incorporated by reference in a footnote in N.C.P.I.–Crim. 206.10.

As an initial matter, the State contends Defendant’s argument is not preserved for appellate review because he failed to object to the alleged deviation at trial. We conclude Defendant’s argument is preserved as a matter of law. “When a trial court agrees to give a requested pattern instruction, an erroneous deviation from that instruction is preserved for appellate review without further request or objection.”

State v. Lee, 370 N.C. 671, 676, 811 S.E.2d 563, 567 (2018). Consistent with *Lee*, Defendant argues the trial court agreed to give a pattern instruction and substantially deviated from it. Under *Lee*, this argument is preserved as a matter of law despite Defendant's failure to make a timely objection. *Id.* "Whether the trial court erred in instructing the jury is a question of law, reviewed de novo." *State v. Irabor*, 262 N.C. App. 490, 494, 822 S.E.2d 421, 424 (2018) (citation omitted). "Under a 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 quotation marks omitted).

"It is a well-established principle in this jurisdiction that in reviewing jury instructions for error, they must be considered and reviewed in their entirety." *Murrow v. Daniels*, 321 N.C. 494, 497, 364 S.E.2d 392, 395 (1988) (citations omitted).

A specific jury instruction should be given when (1) the requested instruction was a correct statement of law and (2) was supported by the evidence, and that (3) the instruction given, considered in its entirety, failed to encompass the substance of the law requested and (4) such failure likely misled the jury.

Outlaw v. Johnson, 190 N.C. App. 233, 243, 660 S.E.2d 550, 559 (2008) (citations and quotation marks omitted). Additionally, "[i]t is well established in this jurisdiction that the trial court is not required to give a requested instruction in the exact language of the request." *State v. Green*, 305 N.C. 463, 476-77, 290 S.E.2d 625, 633 (1982). A trial court need not give an instruction verbatim so long as it gives the instruction in substance. *State v. Godwin*, 369 N.C. 604, 613, 800 S.E.2d 47, 53

(2017).

A trial court's erroneous refusal to instruct the jury in accordance with a criminal defendant's request will not result in a reversal of the trial court's judgment unless the error in question has prejudiced the defendant, with such prejudice having occurred in the event that the defendant shows that there is a 'reasonable possibility that, had the trial court given the [requested instruction], a different result would have been reached at trial.

State v. Benner, 380 N.C. 621, 628-29, 869 S.E.2d 199, 204-05 (2022) (quoting *Lee*, 370 N.C. at 672, 811 S.E.2d at 564).

The pattern jury instruction at issue here reads:

If the defendant was not the aggressor and the defendant was . . .
. [at a place the defendant had a lawful right to be], the defendant
could stand the defendant's ground and repel force with force[.]

N.C.P.I.–Crim. 308.10 (2019). Taking each piece of the instruction in turn, the substance of the pattern instruction requires the jury be informed that if: (1) Defendant was not the aggressor; and (2) Defendant was in a place he had a lawful right to be; then (3) Defendant could stand his ground; and (4) use reasonable force to defend himself.

Here, the trial court made clear Defendant must not have been the aggressor for the defense of self-defense to apply. The trial court twice instructed the jury Defendant had no duty to retreat from a place he had a lawful right to be. It was not contested at trial that the entire incident took place in the parking lot of Defendant's apartment complex, a place he clearly had a lawful right to be.

Further, our Supreme Court has held there is "no material difference . . .

between an instruction that ‘defendant could stand [his] ground’ and an instruction that defendant ‘has no duty to retreat.’ ” *Benner*, 380 N.C. at 635, 869 S.E.2d at 208 (citation omitted). Finally, the trial court instructed the jury if it found Defendant was not the aggressor and was in a place he had a lawful right to be, then Defendant was entitled to use force to defend himself, so long as he “did not use excessive force under the circumstances.” Taken together, the trial court gave the full substance of the stand-your-ground instruction to the jury.

Defendant contends this case is meaningfully distinguishable from *Benner*. We disagree. Our Supreme Court in *Benner* considered whether the trial court substantially gave N.C.P.I.–Crim. 308.10 despite denying the defendant’s request to give that instruction. 380 N.C. at 632, 869 S.E.2d at 207. In *Benner*, the trial court proposed instructing the jury in accordance with N.C.P.I.–Crim. 206.10—the same instruction parties agreed to here—and the defendant expressly requested the trial court also give N.C.P.I.–Crim. 308.10, which Defendant here argues should have been given despite the fact he failed to request it. *Id.* at 626, 869 S.E.2d at 203. There, our Supreme Court concluded the jury had substantially received N.C.P.I.–Crim. 308.10. *Id.* at 633, 869 S.E.2d at 207. That is precisely the issue in this case, the only material difference being that the defendant in *Benner* expressly requested the instruction while Defendant in this case did not. Defendant’s contentions about where the instruction should have been placed or in what order instructions could have been given miss the broader point that the jury here received substantially the

instruction at issue.

Considering the instructions in their entirety, the jury in this case substantially received the stand-your-ground instruction. “Jurors are presumed to follow a trial court’s instructions.” *State v. McCarver*, 341 N.C. 364, 384, 462 S.E.2d 25, 36 (1995) (citation omitted). Defendant has not pointed to any evidence to cast doubt upon this presumption. Therefore, Defendant has not satisfied his burden to show a “reasonable possibility” of a different result had the trial court given the requested instruction. *Lee*, 370 N.C. at 672, 811 S.E.2d at 564. Consequently, we conclude the trial court did not err in issuing its instructions to the jury.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error at trial and affirm the Judgment.

NO ERROR.

Judges CARPENTER and THOMPSON concur.

Report per Rule 30(e).