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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-999

Filed 4 June 2024

Wake County, Nos. 21CR210945-910

STATE OF NORTH CAROLINA

v.

CORDE MONTELL ALSTON, Defendant.

Appeal by defendant from judgment entered 20 April 2023 by Judge Vinston M. Rozier in Wake County Superior Court. Heard in the Court of Appeals 1 May 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sarah N. Cibik, for the State-appellee.*

*Stephen G. Driggers, PLLC, by Stephen G. Driggers, for defendant-appellant.*

GORE, Judge.

Defendant Corde Alston appeals from the trial court's judgment entered upon his conviction for one count of assault with a deadly weapon and one count of discharging a firearm into an occupied vehicle. On appeal, defendant argues the trial court erred by instructing the jury on the aggressor doctrine. We disagree, and therefore, discern no error in the trial court's judgment.

This matter began with a dispute about damage to a car after a hit and run. The State's evidence at trial tended to show the following:

In July 2021, Crystal Lane lived with her boyfriend—defendant—at the Days Inn in Morrisville, North Carolina. On the morning of 4 July 2021, Lane discovered a dent in the front passenger side door and some red paint in the dent. She called the police but did not know the red car's license plate number.

In the late afternoon of 13 July 2021, Paul Pope went to the same Days Inn to visit a friend. Lane spotted Pope parking his red Toyota Corolla. She believed that Pope was the driver who hit her vehicle. Lane then parked her car behind Pope, blocking him in the parking space. According to Lane, she was trying to take a photo of Pope's license plate number and calling the police, while also on the phone with defendant. Pope rolled his windows down to find out what was going on, and Lane accused him of hitting her car.

According to Pope, he had never seen Lane before. Pope described Lane's demeanor as "crazy, out of control, [and] just belligerent." Pope and Lane engaged in a "shouting match" for about 2–3 minutes. Pope put his vehicle in reverse and acted as if he was going to back out into Lane's parked car, and Lane moved out of the way. Pope and Lane again exchanged heated words, and Pope drove out of the parking lot.

Lane followed Pope in her car. Pope attempted to evade Lane by inadvertently turning onto a dead-end road. Pope parked in the parking lot of an office building for about 5–6 minutes hoping that Lane would give up and go away. Lane could not find

Pope, but she knew that he had turned down a dead-end road, so she parked by an intersection at the end of the street. Defendant arrived about 5–10 minutes later, and he briefly drove around looking for Pope but did not see him.

Pope eventually decided to leave, hoping that Lane had given up her pursuit. As he approached the intersection, defendant pulled his Dodge Charger directly into Pope's path to try to stop him. Pope did not slam on his brakes or try to stop, but he tried to avoid hitting defendant's vehicle. Pope hit the rear side of the Charger and sped away. Defendant jumped out of the Charger with a gun in his hand, while his vehicle was still in drive, and ran toward Pope's fleeing car. Defendant fired seven shots at Pope's Corolla, and Pope ducked as he heard the shots hit his car.

Defendant ran back to his still moving Charger and drove off after Pope with his bumper dragging on the ground behind him. Defendant could not find Pope, so he removed the bumper and drove back to Lane because the police had arrived.

Officer Leonard Sershen removed a Glock model 32 semiautomatic (.357 caliber) handgun from the front passenger seat of defendant's Charger, and he also found a box of .357 bullets in defendant's vehicle. Hotel video surveillance footage showed defendant firing a gun as he exited his Charger, entering a shooting stance, and continuing to shoot towards Pope's fleeing vehicle. Shell casings identical to the caliber and brand of the box of bullets in defendant's Charger were found at the scene, and there were bullet holes in the back of Pope's car.

Defendant thought he saw Pope pointing a black "object" out of his car window,

which defendant believed was a weapon. Defendant heard “two bangs” that he believed to be gunshots, and “a lot of ringing” as Pope’s car was passing his. Defendant felt he had done nothing wrong, and that he might have “saved a life or something” because of his actions.

No gun or shell casings were found in Pope’s car, and there were no bullet-holes in defendant’s Charger or Lane’s Sentra. During an investigation, Detective Jacob West noted that defendant’s statements were inconsistent with the physical evidence recovered at the scene. Based on these findings, West and Sershen placed defendant under arrest.

At trial and during the charge conference, the trial court allowed defendant’s request to instruct the jury on self-defense and gave both the State and defendant the opportunity to make arguments on whether the jury should be instructed on the “aggressor doctrine” (N.C.G.S. § 14-51.4). Defendant objected to any instruction on the aggressor doctrine, arguing the State had not submitted any evidence that defendant was the aggressor, that Pope was not in any type of fear, and that Pope had no reason to believe that defendant was with Lane.

The trial court overruled defendant’s objection and allowed the aggressor doctrine instruction, noting that the hotel video surveillance footage was an example of evidence submitted by the State from which the jury could infer that defendant was acting as an aggressor at the time that he allegedly acted in self-defense. The trial court instructed the jury on the elements of each offense, as well as the elements

of self-defense and the aggressor doctrine.

The jury found defendant guilty of one count of discharging a weapon into an occupied vehicle, and of one count of assault with a deadly weapon. The trial court sentenced defendant to concurrent sentences in the presumptive range of 60–84 months for discharging a weapon into an occupied vehicle, and 60 days time served for assault with a deadly weapon. Defendant gave oral notice of appeal in open court. This Court has jurisdiction to hear defendant’s appeal pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2023).

Defendant argues the trial court erred by instructing the jury on the aggressor doctrine because, in defendant’s view, his use of force was justified when Pope drove his Toyota Corolla into his own vehicle before speeding away. We disagree.

“A trial court must give a requested instruction that is a correct statement of the law and is supported by the evidence.” *State v. Conner*, 345 N.C. 319, 328 (1997) (citation omitted). We review the trial court’s decisions regarding jury instructions de novo. *State v. Osorio*, 196 N.C. App. 458, 466 (2009). “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 (2008) (quotation marks and citation omitted).

North Carolina General Statutes § 14-51.3 provides, in relevant part:

a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

N.C.G.S. § 14-51.3(a)(1) (2023). Under § 14-51.4, however, a statute commonly known as the “aggressor doctrine[,]” *State v. Hicks*, 385 N.C. 52, 60 (2023), “[t]he justification described in . . . G.S. 14-51.3 is not available to a person who used defensive force and who: . . . (2) Initially provokes the use of force against himself or herself.” § 14-51.4(2) (2023). “Someone may be considered the aggressor if they aggressively and willingly enter into a fight without legal excuse or provocation. Additionally, someone who did not instigate a fight may still be the aggressor if they continue to pursue a fight that the other person is trying to leave.” *Hicks*, 385 N.C. at 60 (cleaned up).

“When deciding whether to include the aggressor doctrine in jury instructions, the relevant issue is simply whether the record contains evidence from which the jury could infer that the defendant was acting as an “aggressor” at the time that he or she allegedly acted in self-defense.” *Id.* at 60–61 (internal quotation marks and citation omitted).

While all evidence is to be considered, the evidence must be considered in the light most favorable to the State. The State must be given the benefit of every reasonable inference to be drawn from the evidence and any contradictions in the evidence are to be resolved in favor of the State.

*Id.* at 61 (internal quotation marks and citation omitted). “Contradictions in the evidence are resolved favorably to the [S]tate.” *State v. Sumpter*, 318 N.C. 102, 107

(1986) (citation omitted).

In this case, the State’s evidence tended to show one continuous chain of events, that is, “an affray presently existing,” rather than two separate and distinct incidents, or a “prior difficulty” that explains subsequent events without bearing “limitation upon the right of self-defense.” *State v. Miller*, 223 N.C. 184, 188 (1943). And the State’s evidence permits an inference that defendant aggressively and willingly entered into a fight with Pope, without legal excuse or provocation, when he pulled his Charger out into the middle of the street and blocked the traveling lane in an attempt to prevent Pope from leaving. Defendant shot at Pope from behind as Pope was attempting to flee, *see State v. Cannon*, 341 N.C. 79, 82 (1995), and surveillance footage shows defendant running toward Pope’s fleeing vehicle while continuing to shoot at it long after Pope’s car was out of the camera’s field of view. The jury could infer from the State’s evidence that defendant did not have a reasonable belief that it was necessary to use deadly force against Pope, and that defendant was either not acting in self-defense—or was acting as an aggressor—during this confrontation.

Moreover, the State’s evidence merely conflicts with defendant’s account of events—that he was in fear for his life and Lane’s life at the time he shot at Pope’s vehicle. Contradictions in the evidence are for the jury to decide. *Hicks*, 385 N.C. at 60 (internal quotation marks and citation omitted) (“A trial court must give the substance of a requested jury instruction if it is correct in itself and supported by the

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evidence. When the evidence is conflicting, it is for the jury to determine whether the defendant was the aggressor.”).

In sum, the State’s evidence “permits the inference that defendant was the aggressor at the time he shot the victim[.]” *Cannon*, 341 N.C. at 82. Because the record contains evidence from which the jury could reasonably infer that defendant was acting as an aggressor at the time he allegedly acted in self-defense, and because the trial court correctly instructed the jury on the aggressor doctrine, we discern no error in the trial court’s judgment.

NO ERROR.

Judges HAMPSON and FLOOD concur.

Report per Rule 30(e).