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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-1019

Filed 18 June 2024

Madison County, No. 22 CRS 50173

STATE OF NORTH CAROLINA

v.

CHAD COLTON SIMMONS, Defendant.

Appeal by Defendant from Judgment entered 25 May 2023 by Judge Gary M. Gavenus in Madison County Superior Court. Heard in the Court of Appeals 2 April 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Victor A. Unnone, III, for the State.*

*Stanley F. Hammer for Defendant-Appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Chad Colton Simmons (Defendant) appeals from a Judgment entered on a jury verdict finding him guilty of Assault by Strangulation. The Record tends to reflect the following:

Between 10:15 and 10:30 pm on 16 April 2022, Defendant arrived at his Mars

Hill apartment building with his girlfriend, Morgan King, and their son and dog. The dog jumped out of the car and ran toward an upstairs apartment, where two other dogs lived. Defendant yelled at the dog to “get your ass down here.”

A neighbor, Tami Davis, was outside on her porch and, thinking Defendant was yelling at dogs belonging to an upstairs tenant, told Defendant to speak in a nicer tone to the dogs. Defendant told Tami to mind her own business and Morgan told her that Defendant was yelling at his own dog. Morgan also called Tami a “bitch.”

Tami walked out into the parking lot and began to argue with Morgan. Tami’s sixteen-year-old daughter Sydni overheard the argument, came out into the parking lot, and stood between Tami and Morgan. The altercation between the three became physical, and Defendant intervened.

Sydni testified that Defendant lunged at her, she kicked him in the groin, and he grabbed her by the throat and lifted her off the ground. She was unable to breathe or scream.

Defendant testified that when he entered the fight he pushed the women apart, stating, “If I grabbed anywhere, it wasn’t intentional. It’s just kind of pushed away, and where my hands laid, that’s where they went. I was not trying to hurt anyone.” He testified that he intervened in order to protect Morgan and, when asked if he thought his actions were necessary to protect himself, said, “[y]es, because . . . my son was in the car and I didn’t know what these people’s intentions were.” He also testified that Tami and Sydni struck him, but not until he stepped into the fight.

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Defendant stepped out of the fight and went to his apartment to retrieve his gun. He walked back outside and fired it into the air twice, at which point the fighting stopped. Sydni ran inside and called 911.

Officers with the Madison County Sheriff's Office arrived at the scene. They found that everyone involved had sustained "some sort of injury" and noted red marks around Sydni's neck. Sydni was not taken to the hospital but testified that she had difficulty breathing and felt pain until the next day.

Defendant was charged with Assault by Strangulation, Assault by Pointing a Gun, and Assault on a Female. At trial, Defendant requested the jury be instructed on self-defense and defense of another. The trial court instructed the jury on defense of others but denied his request as to the self-defense instruction. The jury found Defendant guilty of Assault by Strangulation and not guilty of all other charges. Defendant was sentenced to a term of 6-17 months' imprisonment, suspended for 30 months of probation. Defendant gave oral notice of appeal.

**Issues**

The sole issue on appeal is whether the trial court erred by denying Defendant's request that the jury be instructed on self-defense.

**Analysis**

"It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence." *State v. Shaw*, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988). "[W]here competent evidence of self-defense is presented at trial, the

defendant is entitled to an instruction on this defense.” *State v. Morgan*, 315 N.C. 626, 643, 340 S.E.2d 84, 95 (1986). To assert self-defense, a defendant must show that “he or she (1) reasonably believes (2) that his or her use of force (3) is necessary (4) to defend himself or herself against the imminent use (5) of unlawful force by another.” *State v. Hooper*, 382 N.C. 612, 628-29, 879 S.E.2d 549, 560 (2022); N.C. Gen. Stat. § 14-51.3(a) (2023). “In determining whether a defendant has presented competent evidence sufficient to support a self-defense instruction, we take the evidence as true and consider it in the light most favorable to the defendant.” *State v. Coley*, 375 N.C. 156, 159, 846 S.E.2d 455, 457 (2000). If such evidence is produced, “the court must charge on this aspect even though there is contradictory evidence by the State or discrepancies in defendant’s evidence.” *State v. Dooley*, 285 N.C. 158, 163, 203 S.E.2d 815, 818 (1974).

We review challenges to the trial court’s decision regarding jury instructions *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). “[A]n error in jury instructions is prejudicial and requires a new trial only if ‘there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.’” *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (quoting N.C. Gen. Stat. § 15A-1443(a)).

In this case the evidence, taken in the light most favorable to Defendant, shows that a physical confrontation began between Morgan and Tami and Sydni, and

Defendant entered the confrontation in an attempt to protect Morgan. Defendant testified that Tami and Sydni struck him in the face. Sydni testified that she kicked Defendant in the groin as he lunged towards her, though Defendant did not recall being kicked in the groin. Defendant testified that he only pushed the women away, but officers later responding to the event observed red marks around Sydni's neck. Defendant disengaged from the fight by, in his own words, "just kind of walk[ing] away from them" and went to his apartment to retrieve his gun. He testified that his main priority was to protect himself and his girlfriend.

"The right to act in self-defense rests upon necessity[.]" *State v. Marsh*, 293 N.C. 353, 354, 237 S.E.2d 745, 747 (1977). "A person may exercise such force if he believes it to be necessary and has reasonable grounds for such belief." *Id.* Here, Defendant's evidence did not show his actions were reasonably necessary to defend himself. He chose to intercede in an ongoing physical altercation in which he was not involved, and he was not attacked until he chose to enter the fight.

Indeed, Defendant testified he joined the fight to protect Morgan—not himself. Consistent with this evidence, the jury was instructed on defense of another. By convicting Defendant of Assault by Strangulation, however, the jury determined that the assault was not "necessary or apparently necessary to protect a family member [from] bodily injury or offensive physical contact," as instructed by the trial court. Ultimately, when the fight continued, Defendant was able to disengage and walk away without continuing to defend himself.

Moreover, Defendant's evidence does not support an inference he held the subjective belief that his actions were necessary, as he denies intentionally strangling Sydni. Defendant testified: "If I grabbed anywhere, it wasn't intentional. It's just kind of pushed away, and where my hands laid, that's where they went. I was not trying to hurt anyone." His denial of the act as intentional is, effectively, a statement that he did not believe at the time that this application of force was required to defend himself. "Defendant's failure to expressly admit to [the alleged use of force] further undercuts his ability to argue that [the use of force] was committed as an act of self-defense." *State v. Harvey*, 372 N.C. 304, 310, 828 S.E.2d 481, 485 (2019) (holding the trial court did not err in declining to instruct the jury on self-defense when the defendant testified that stabbing the victim was accidental).

Defendant cites two cases in support of his argument, both of which are distinguishable from the facts at hand. In *State v. Coley*, 375 N.C. 156, 846 S.E.2d 455 (2020), our Supreme Court held that the defendant, convicted of assault with a deadly weapon inflicting serious injury, was entitled to a jury instruction on self-defense. In that case, the victim struck the defendant, followed him to his home, and attacked him inside the home. *Coley*, 375 N.C. at 157, 846 S.E.2d at 456. The victim left the home and came back with a friend and struck the defendant multiple times. *Id.* He left the house again and returned a third time, at which point the defendant shot and injured him. The defendant testified that he was "[s]cared, fearful" and that he "didn't know what was going on at the time." *Id.*

In *State v. Moore*, 111 N.C. App. 649, 432 S.E.2d 887 (1993), the defendant testified that he overheard a confrontation involving his wife and a couple. He walked inside, shoved the couple, and pulled his wife out of the house. 111 N.C. App. at 651, 432 S.E.2d at 888. The defendant turned around to see the other man with a hammer in his hand. *Id.* The man grabbed the defendant, who took the hammer out of his hand and struck him in an attempt to get away. *Id.* When the defendant escaped, he and his wife got into their car and drove away. *Id.*

In both of these cases the evidence, taken in the light most favorable to the defendants, showed that they were attacked by another and used force in response to their aggressor. They did not join an ongoing physical altercation, nor did they have the ability to disengage by simply walking away. There was evidence showing the defendants reasonably believed force was necessary to defend themselves. Additionally, in each of those cases the defendants admitted to the use of force alleged by the State, and asserted the affirmative defense of self-defense.

The evidence in this case did not support a jury finding that Defendant acted in self-defense. The trial court therefore did not err in declining to instruct the jury on self-defense. Consequently, the trial court properly entered judgment upon the jury verdict finding Defendant guilty of Assault by Strangulation.

### **Conclusion**

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

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NO ERROR.

Judges ZACHARY and THOMPSON concur.

Report per Rule 30(e).