

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-998

Filed 16 July 2024

Wilson County, No. 22 CRS 051089

STATE OF NORTH CAROLINA

v.

RODNISHA BARNES

Appeal by Defendant from a judgment entered 4 May 2023 by Judge William D. Wolfe in the Superior Court of Wilson County. Heard in the Court of Appeals 17 April 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Carl Newman, for the State.

Mark Hayes, for the Defendant.

WOOD, Judge.

Rodnisha Barnes (“Defendant”) appeals from a jury conviction of discharging a firearm into an occupied vehicle in operation. On appeal, Defendant contends the trial court erred by excluding a video from evidence and failing to instruct the jury on the Castle Doctrine. For the reasons outlined below, we hold Defendant received a fair trial free from error.

I. Factual and Procedural Background

On 27 March 2022, Defendant and others were out celebrating in Rocky Mount with Lee Pender (“Lee”). Meanwhile, Raven Barnes (“Raven”) who was seven-months pregnant and carrying Lees child, was at home. Raven noticed several videos were posted on social media of the group dancing provocatively on Lee. Raven commented on one of the videos, “tell [my] baby daddy to call [me].” On 28 March 2022, at approximately 2:00 a.m., Raven was upset, drove to Lee’s home, parked in his driveway, and waited for his return home to confront him about the night. Subsequently, a white Mercedes Benz pulled into the driveway and Raven saw Defendant, Lee, and two other females in the vehicle. Raven then turned her car lights on, and the vehicle backed out of the driveway and drove off. Still upset, Raven left Lee’s home to see where he went. However, unknown to Raven, Lee got out of the vehicle further down the street shortly after.

Raven searched for Lee but was unsuccessful in locating him and decided to drive home. While on her way home, she noticed the same white Mercedes Benz parked at a Sheetz gas station pump and saw the driver-side door open and Defendant vomiting. Raven pulled into the gas station, parked on the other side of the gas pump, kept her car running, and approached the vehicle. She hoped to confront Lee but found only Defendant and C’iarra Ward (“C’iarra”) in the vehicle.

An argument ensued between Raven, Defendant, and C’iarra. As the argument escalated, Raven pushed Defendant’s door open further and stuck her head

inside the vehicle. At some point, Defendant showed Raven that she had a gun in her glove compartment and then put the gun on the passenger seat of her vehicle. Raven walked back and forth to her car a few times during the argument and then took off her coat, put it in her car, and walked back to Defendant's vehicle. C'iarra exited the vehicle and stood between Defendant and Raven. Defendant then got out of the vehicle and a physical fight between the women began. At trial, Raven and Defendant's testimony was contradictory on how the fight started and on certain physical altercations. Defendant and C'iarra testified that Raven grabbed Defendant's hair and pulled her out of the car. Contrarily, Raven testified that Defendant got out of the vehicle and began swinging. It was undisputed that Raven stuck her finger in Defendant's eye during the fight and that Defendant asked C'iarra to retrieve the gun from the vehicle. The gas station surveillance video showed both parties punching and shoving one another for approximately a minute and a half.

Eventually, Raven headed towards her car, got inside, and shut the door. Almost simultaneously, as Raven put her foot on the gas pedal and began to accelerate, Defendant started shooting at Raven's car. Defendant fired the first shot near Raven's car as she accelerated, then Defendant continued to step forward and fire additional shots as Raven drove off, firing the gun a total of five times. Defendant testified she believed Raven was trying to kill her, so she "just turned around and just started shooting" and "aimed in the direction that [she] knew [Raven] was at."

The following day, Raven recorded a ten second social media video clip. The

video had a screenshot of a news article describing the event, which illustrated Raven as the “victim.” Raven then appears in the video, smiling, waiving her arms in the air, and says “victim, victim, big victim.” The trial court excluded the video from evidence after determining that Raven’s belief that she was a “victim” did not go to any element of the offense. However, the trial court permitted Defendant to introduce a similar videotape into evidence. The video was of Raven reenacting some of the physical altercations from that night. Specifically, the video depicted Raven acting as if she was “grabbing somebody by the weave” while making hitting motions. The video was admitted into evidence on the grounds that it would assist the jury in determining who was the aggressor.

Defendant was tried for attempted murder, assault with a deadly weapon with intent to kill, and discharge of a weapon into an occupied vehicle in operation. The jury was instructed on self-defense on all three charges and ultimately found Defendant guilty of discharging a weapon into an occupied vehicle and not guilty of the other charges. Defendant gave timely, oral notice of appeal following sentencing.

II. Analysis

Defendant presents two issues on appeal. She argues (1) the trial court erred when it excluded her unmarked “victim, victim” video from evidence and prohibited direct examination concerning the video and (2) the trial court erred by not giving the jury an instruction on the “Castle Doctrine” because Defendant was presumed to have held a reasonable fear of imminent death or serious bodily harm. We address each

argument in turn.

A. The “victim, victim” Video

Defendant argues the trial court erroneously excluded the video from evidence because the video was highly relevant and had substantial probative value, it was not cumulative of Defendant’s Exhibit #1 under Rule 403, and in turn, Defendant was prejudiced by the error. Defendant further asserts the trial court erred when it prevented defense counsel from questioning Raven on direct examination about the video.

Rulings under Rule of Evidence 403 are “within the sound discretion of the trial court, and the trial court’s ruling should not be overturned on appeal unless the ruling was manifestly unsupported by reason or was so arbitrary that it could not have been the result of a reasoned decision.” *State v. Young*, 368 N.C. 188, 210-211, 775, S.E.2d 291, 306 (2015) (citations omitted). Such determinations are discretionary and binding on appeal, “unless the dissatisfied party shows that the trial court abused its discretion.” *State v. Chapman*, 359 N.C. 328, 348, 611 S.E.2d 794, 811 (2005) (citations omitted).

Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. Gen. Stat. § 8C-1, Rule 401. Under Rule 403, relevant evidence may be excluded if “its probative value is substantially outweighed by . . . considerations of undue delay, waste of time,

or needless presentation of cumulative evidence.” N.C. Gen. Stat. § 8C-1, Rule 403. Cumulative evidence is properly excluded if the evidence “would have added little, if anything, to the testimony . . . already given.” *State v. Barton*, 335 N.C. 696, 704, 441 S.E.2d 295, 299 (1994). Thus, we must determine whether the trial court abused its discretion by excluding the video from evidence when it considered the relevance of the evidence and balanced its probative value against the presentation of cumulative evidence to the jury. N.C. Gen. Stat. § 8C-1, Rule 403.

During the trial, in the absence of the jury, the trial court excluded the video from evidence “as it fails the 403 test.” The trial court explained:

The Court permitted Defendant to introduce Defendant's Exhibit 1, which was a similar videotape, because in that videotape Ms. Raven Barnes can be seen to be apparently miming some forcible actions that may or may not have occurred in the parking lot on the night in question so the Court on that basis permitted that videotape because it might go to whether or not who was the aggressor. The trial is about whether or not the Defendant has criminal liability for the actions that occurred in the parking lot of the Sheetz that night. Whether or not Ms. Raven Barnes believes she is a victim or not is a collateral matter and that evidence doesn't go to, in the Court's opinion, any element of the offense, but your showing is now in the record.

Defendant contends the video was relevant and had substantial probative value because it could have supported the conclusion that Defendant acted in self-defense and that she was not the aggressor. In support, Defendant argues that Raven's smiling and pleased demeanor towards the news article labeling her a victim leads to an inference that Raven did not herself believe she was the victim, which,

consequently, undercuts the credibility of her testimony at trial. Further, Defendant distinguishes the excluded video from Defendant's Exhibit #1. Defendant contends that the excluded video provided insight as to which woman was the aggressor and Raven's response to being considered a victim, while Defendant's Exhibit #1 did not.

At trial, Defendant, Raven, and C'iarra testified extensively about the altercation and how it began. State's Exhibit #3, the gas station video, was shown to the jury multiple times and captured the entire incident. Defendant's Exhibit #1 was admitted for the purpose of determining who was the initial aggressor. Despite no audio in the respective Exhibit, the video included Raven dancing, showing her pregnant stomach, and mimicking physical interactions from the fight, including, grabbing, punching, and hitting. Therefore, the oral testimony provided by the individuals involved, the exhibits placed into evidence, and the instructions on self-defense on all three charges was sufficient for the jury to make a determination of whether Defendant was the aggressor. Accordingly, the "victim, victim" video could reasonably be determined a "waste of time" or "needless presentation of cumulative evidence."

Furthermore, the decision to exclude the evidence does not appear to be "so arbitrary that it could not have been the result of a reasoned decision." *Young*, 368 N.C. at 210, 775 S.E.2d at 306. The trial court contemplated the evidence presented to the jury, the irrelevance of Raven's state of mind as it relates to her belief of whether she was a victim, and the ultimate issue in the case, including its

acknowledgment in determining who was the aggressor. As a result, we hold the trial court did not abuse its discretion when it excluded the “victim, victim” video under Rule 403.

B. Castle Doctrine Instruction

Defendant further contends the trial court erred when it failed to instruct the jury that, pursuant to the Castle Doctrine, Defendant was presumed to have held a reasonable fear of imminent death or serious bodily harm. As a preliminary matter, we must first address the issue of whether Defendant’s argument regarding a jury instruction on the Castle Doctrine was preserved for review. Under the North Carolina Rules of Appellate Procedure, “[i]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make.” N.C. R. App. P. 10(a)(1). “[W]here a specifically requested jury instruction is proper and supported by the evidence, the trial court must give the instruction, at least in substance” however, “such requested special instructions should be submitted in writing to the trial judge.” *State v. Augustine*, 359 N.C. 709, 729, 616 S.E.2d 515, 529-530 (2005) (internal quotations and citations omitted).

An unpreserved issue “may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.” N.C. R. App. P. 10(a)(4). Under the plain error standard, “the appellate court must examine the entire record and determine if the instructional

error had a probable impact on the jury's finding of guilt." *State v. Odom*, 307 N.C. 655, 661, 300 S.E.2d 375, 379 (1983) (citations omitted). The alleged error must be a "fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done." *Id.* at 660, 300 S.E.2d at 378. In the present case, Defendant did not request a Castle Doctrine jury instruction, nor submit a request for a special instruction in writing. Therefore, Defendant did not properly preserve the issue on appeal. Accordingly, we review Defendant's argument under the plain error standard of review.

Defendant argues that competent and undisputed evidence supported a Castle Doctrine instruction and, had the instruction been given, it would have had a probable impact on the jury's verdict. N.C. Gen. Stat. § 14-51.2(b) provides a rebuttable presumption outlining when the use of defensive force is lawful:

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

However, N.C. Gen. Stat. § 14-51.2(c) states,

(c) The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following circumstances:

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

Here, the State presented evidence that Raven was unarmed and attempting to leave the scene when Defendant started firing her gun. The surveillance video, which was played for the jury, showed that Defendant fired the first gunshot almost contemporaneously as Raven was about to drive away. Defendant fired four additional gunshots as Raven was driving away. Thus, the evidence does not support a Castle Doctrine instruction, as Defendant continued to fire the gun after Raven retreated and was driving off.

Furthermore, assuming *arguendo* a Castle Doctrine instruction would have been appropriate, we are unable to say such an error would have had a probable impact on the jury's verdict. The jury instructions given by the trial court on self-defense for the charge of discharging a firearm into an occupied vehicle in operation included:

A person is also justified in using defensive force when the force used by the person who is provoked is so serious that the person using defensive force reasonably believed that she was in imminent danger of death or serious bodily

harm, the person using defensive force had no reasonable means to retreat, and the use of force likely to cause death or serious bodily harm was the only way to escape the danger.

Thus, the jury contemplated whether Defendant's actions were rooted from a belief of imminent danger of death or serious bodily harm. However, the jury's guilty verdict indicates that sufficient evidence was presented that Defendant did not have a reasonable fear of imminent death or serious bodily harm when Raven got into her vehicle and drove away from the gas station. Further, it cannot be concluded that Defendant formed a reasonable belief that the degree of force was necessary or proportionate. As such, given the jury's finding that Defendant's actions were not justified by self-defense, consideration of the reasonableness of the force, and the surrounding circumstances, Defendant is unable to meet her burden of showing that the error amounted to plain error. Therefore, the trial court properly instructed the jury on the evidence and did not plainly err when it did not instruct the jury on the Castle Doctrine defense.

III. Conclusion

For the foregoing reasons, the trial court did not err when it excluded Defendant's video from evidence, and the trial court did not plainly err by not instructing the jury on the Castle Doctrine. Thus, we hold Defendant received a fair trial free from error.

NO ERROR.

Judges CARPENTER and GORE concur.

STATE V. BARNES

Opinion of the Court

Report per Rule 30(e).