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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-25

Filed 16 July 2024

Guilford County, No. 18 CRS 91029

STATE OF NORTH CAROLINA

v.

JONATHAN RALPH WHITE

Appeal by Defendant from Judgment entered 2 June 2023 by Judge Patrick Thomas Nadolski in Guilford County Superior Court. Heard in the Court of Appeals 29 May 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Brent D. Kiziah, for the State.

John E. Ryan, III, for Defendant.

HAMPSON, Judge.

Factual and Procedural Background

Jonathan Ralph White (Defendant) appeals from a Judgment entered upon a jury verdict finding him guilty of Assault on a Law Enforcement Officer with a Firearm. The Record before us tends to reflect the following:

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Early in the morning on 25 December 2018, Deputy Josiah Cook, Deputy Weyman Smith, and Corporal Kyle Mikesell from the Guilford County Sheriff's Office were dispatched to Defendant's residence in High Point, North Carolina in response to calls about a domestic dispute. 911 operators indicated Defendant was hostile, armed, and holding his family hostage inside his home. The deputies, who had already activated the lights and sirens of their police vehicles as they responded to the call, approached Defendant's residence, and parked down the road from the home.

The deputies approached the residence in uniform, with badges displayed and guns drawn. As they neared the home, a teenage boy came out of the house and informed the deputies that his mom, two siblings, and Defendant were inside the house, and that there were firearms inside the house. The boy also explained Defendant was acting manically, kicked in a door, and was holding the family hostage.

Shortly thereafter, Defendant's father came speeding up to the deputies' location in his truck, jumped out of the vehicle, and screamed at the deputies to not kill his son. Seconds later, Defendant emerged from the residence with a handgun in his right hand. Holding onto the gun, Defendant began yelling and waving his arms around. Deputy Cook testified: "based off the timing, the circumstances, and different things, . . . I came to the conclusion . . . that he was attempting to try to hurt somebody." One of the officers yelled "gun[.]"

Deputy Cook testified Defendant then made a sweeping motion with his hand, holding the gun first toward Deputy Smith and then toward Deputy Cook. Deputy Cook recognized Defendant's sweeping motion as threatening and, under the circumstances, believed Defendant intended to harm someone. Deputy Cook took cover behind a maple tree. Deputy Smith was in fear for his life and the lives of others present at the scene.

Deputy Cook and Corporal Mikesell repeatedly commanded Defendant to drop the gun and put his hands up. Additionally, Deputy Smith began yelling "hands, hands, hands" after recognizing Defendant was holding a gun in an effort to get Defendant to drop the gun and show his empty hands. Defendant did not drop the gun.

Deputy Smith then fired three shots at Defendant. Each shot missed Defendant and struck the home some distance above and away from Defendant. Defendant subsequently dropped his hands to his side but continued to hold onto the gun. The deputies negotiated with Defendant to surrender for between forty-five minutes and an hour. Following Defendant's agreement to surrender, Officer Cook secured Defendant's weapon, which had a round in the chamber and a total of seven rounds. Body-worn camera footage of the incident from both Deputy Cook and Deputy Smith was admitted into evidence and published to the jury.

On 12 November 2019, Defendant was indicted for Assault on a Law Enforcement Officer with a Firearm. The indictment alleged Defendant "unlawfully

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and willfully assaulted” Deputy Smith with a firearm by coming out of his house knowing law enforcement was outside, brandishing the gun, and pointing it directly at Deputy Smith. This case came on for trial on 30 May 2023. At trial, Defendant’s counsel argued that because the indictment did not contain language that would put Defendant on notice the State would employ a “show of force assault theory,” the State should be precluded from proceeding under that theory of assault. As a result, the trial court limited the State to establishing assault under the theory that Defendant made “an intentional attempt, by violence, to do an injury to the person of another.” *State v. Davis*, 23 N.C. 125, 127 (1840).

At the close of the State’s evidence, Defendant moved to dismiss the case for insufficient evidence, arguing the State had not established he had the requisite intent to be guilty of an assault. The trial court denied Defendant’s Motion. Defendant renewed his Motion to Dismiss at the close of all the evidence. The trial court again denied the Motion.

On 1 June 2023, the jury returned a verdict finding Defendant guilty of Assault on a Law Enforcement Officer with a Firearm. The trial court sentenced Defendant to 21 to 38 months of imprisonment. Defendant gave oral Notice of Appeal in open court.

Issue

The issue on appeal is whether the trial court erred in denying Defendant’s Motion to Dismiss for insufficiency of the evidence.

Analysis

“Upon [a] defendant’s motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Fields*, 265 N.C. App. 69, 71, 827 S.E.2d 120, 122 (2019) (citation and quotation marks omitted), *aff’d as modified*, 374 N.C. 629, 843 S.E.2d 186 (2020). “Substantial evidence is [the] amount ... necessary to persuade a rational juror to accept a conclusion.” *State v. Golder*, 374 N.C. 238, 249, 839 S.E.2d 782, 790 (2020) (alterations in original) (citation and quotation marks omitted).

“Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo.” *Id.* at 250, 839 S.E.2d at 790 (citation and quotation marks omitted). “In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered ‘in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom.’ ” *Id.* at 249-50, 839 S.E.2d at 790 (quoting *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citation omitted)). Evidence “need not be irrefutable or uncontroverted” to be substantial. *State v. Butler*, 356 N.C. 141, 145, 567 S.E.2d 137, 139 (2002). Discrepancies and contradictions within the evidence are

jury issues and are therefore not considered in reviewing the denial of a motion to dismiss. *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005).

Here, Defendant contends the trial court erred in denying his Motion to Dismiss because the State failed to present substantial evidence Defendant committed assault. Specifically, Defendant argues the State failed to provide sufficient evidence Defendant acted with the requisite intent for assault.

Our General Statutes set out the offense of Assault on a Law Enforcement Officer with a Firearm in pertinent part as follows: “Any person who commits an assault with a firearm upon a law enforcement officer . . . while the officer is in the performance of his or her duties is guilty of a Class D felony.” N.C. Gen. Stat. § 14-34.5(a) (2021). As such, to prove the offense, the State is required to present substantial evidence: of “(1) an assault; (2) with a firearm; (3) on a law enforcement officer; (4) while the officer is engaged in the performance of his or her duties.” *State v. Haynesworth*, 146 N.C. App. 523, 531, 553 S.E.2d 103, 109 (2001).

Assault is defined at common law as “an overt act or attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or violence must be sufficient to put a person of reasonable firmness in fear of immediate physical injury[,]” *id.* at 529, 553 S.E.2d at 108, or “an intentional attempt, by violence, to do an injury to the person of another.” *Davis*, 23 N.C. at 127.

In this case, the indictment alleged Defendant “unlawfully and willfully did assault” Deputy Smith with a firearm by coming out of his house knowing law

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enforcement was outside, brandishing the gun, and pointing it directly at Deputy Smith. As a result, the trial court limited the State to establishing assault under the theory that Defendant made “an intentional attempt, by violence, to do an injury to the person of another.” *Davis*, 23 N.C. at 127.¹ Under this definition of assault, “[t]here must be an intent to injure, though this intent may be inferred by the jury from the act[s] [of the defendant].” *State v. Hemphill*, 162 N.C. 632, 632, 78 S.E.2d 167, 168 (1913) (citation omitted). Moreover, “the nature of the assault, the manner in which it was made, the weapon, if any, used, and the surrounding circumstances are all matters from which an intent . . . may be inferred.” *State v. White*, 307 N.C. 42, 49, 296 S.E.2d 267, 271 (1982).

This Court has previously affirmed a conviction for Assault on a Law Enforcement Officer with a Firearm when a defendant took intentional actions with a weapon that were naturally perceived as threatening by law enforcement officers. *State v. Childers*, 154 N.C. App. 375, 382-83, 572 S.E.2d 207, 212 (2002). In *Childers*, the defendant, in resisting an arrest, slammed a revolver on a counter and challenged the officers to “[c]ome behind the counter and get [him].” *Id.* at 381, 572 S.E.2d at 212. Although the *Childers* Court did proceed under a show-of-force theory, the Court established that, to complete an assault on a law enforcement officer with a firearm, a defendant need not point the firearm at the law enforcement officer. *Id.* at 382, 572

¹ The question of whether this case could have been submitted to the jury on a show-of-force theory is not before us and we do not reach that question.

S.E.2d at 212. Indeed, the defendant's behavior with the firearm, which would put a person of reasonable firmness in fear of immediate injury, constituted an assault. *Id.*

Similarly, in *State v. O'Briant*, this Court affirmed a conviction for assault where the defendant placed his hand on a shotgun and thrust its barrel outside the window of his car. 43 N.C. App. 341, 345-46, 258 S.E.2d 839, 841-42 (1979). While a shot was fired from the gun in *O'Briant*, the evidence reflected the defendant was struggling for the gun with another person in his car. *Id.* at 343-44, 258 S.E.2d at 841. Ultimately, the *O'Briant* Court noted it was "immaterial" whether the defendant pointed the gun at a person or whether the gun was fired. *Id.* at 345, 258 S.E.2d at 842. Indeed, the Court concluded the assault was complete from the moment the defendant thrust the barrel of the gun outside the window of his car. *Id.* Finally, although the Court in *O'Briant* proceeded on an alternative theory of assault not applicable in this case, the Court stated, "the evidence in the present case would probably support a jury verdict finding defendant guilty of assault . . . no matter which of the above rules is applied[.]" *Id.*

In the present case, viewing the evidence in the light most favorable to the State, the evidence showed Defendant "violently" opened the door and exited quickly to confront law enforcement officers. Defendant was yelling and holding a handgun, which he was waving around. He swept the gun around in the direction of Deputy Smith, causing another Deputy to take cover behind a tree. Additionally, Defendant only lowered his weapon after being fired upon himself. Furthermore, the

surrounding circumstances, including the flashing lights, blaring sirens, and Sheriff's Deputies in uniform outside of the home, clearly signaled the presence of law enforcement. The evidence also reflected Defendant ignored commands from law enforcement to show his empty hands. Indeed, Defendant continued to hold the firearm and kept it at least within reach for another forty-five minutes while he negotiated his surrender.

Considering the totality of the circumstances, the evidence presented at trial supports an inference that Defendant's emergence from the house, armed and sweeping the gun in the direction of the law enforcement officers was "an intentional attempt, by violence, to do an injury to the person of another." *Davis*, 23 N.C. at 127. Thus, the State produced sufficient evidence from which a rational juror could conclude Defendant possessed the requisite intent for assault. Therefore, the trial court did not err by denying Defendant's Motion to Dismiss. Consequently, the trial court did not err in entering Judgment against Defendant.

Conclusion

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

NO ERROR.

Chief Judge DILLON and Judge ARROWOOD concur.

Report per Rule 30(e).