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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-697

Filed 19 November 2024

Durham County, Nos.20CRS51940, 21CRS1124-25, 21CRS54197, 21CRS54199

STATE OF NORTH CAROLINA

v.

KENDRICK ONEAL NORMAN, Defendant

Appeal by Kendrick Norman from judgment entered 29 April 2022 by Judge G. Bryan Collins Jr. in Durham County Superior Court. Heard in the Court of Appeals 9 January 2024.

Thomas Ferguson & Beskind, LLP, by Attorney Kellie Mannette, for the defendant-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General, Rana M. Badwan, for the State.

STADING, Judge.

Kendrick Norman (“Defendant”) appeals from a final judgment after a jury found him guilty of two counts of assault on a law enforcement officer inflicting physical injury, two counts of habitual assault, and one count of resisting, delaying, or obstructing an officer (“RDO”). After careful review, we affirm the judgment.

I. Background

On 20 August 2021, several law enforcement officers from the Durham Police Department's Homicide Unit were investigating a report of a missing female at a local HomeTowne Inn and Suites. Each officer—Corporal Novotny, Investigator Williams, and Investigator Turner—arrived at separate times. All officers were visibly armed and wearing their police badges.

Upon the officers' arrivals, someone from a nearby group including Defendant began to heckle the officers. Investigator Williams heard one of the group members say "F*** the police," to which he responded, "we're not even here for you" as he continued towards the hotel's office. As the officers entered the hotel, Defendant approached Investigator Williams who reiterated his previous statement.

Meanwhile, Investigator Turner approached as Defendant was yelling at Investigator Williams. Upon the arrival of the other officers, Defendant persisted. Defendant shouted at Investigator Williams, "I'm not going to f***** talk to you." In response, the officers informed Defendant that "he was not being detained" and he was "free to leave at any time." Even so, Defendant persisted. Without engaging Defendant, Corporal Novotny instructed the officers to "just go inside the office" so they could continue their investigation. Defendant followed the officers and continued to heckle Investigator Williams, stating, "You're not sh*t without that badge." The officers entered the office and discussed the missing person's case with the hotel manager.

Defendant entered the office moments later and demanded the name and badge number of Investigator Williams. Corporal Novotny, the supervising officer, was not present during the first interaction between Defendant and Investigator Williams. In an attempt to understand Defendant's request, Corporal Novotny met Defendant at the office door. After some conversation, Corporal Novotny understood that Defendant wanted to file a complaint against Investigator Williams. To Defendant's dissatisfaction, Corporal Novotny offered his badge number and name, as the supervising officer. Defendant then struck Corporal Novotny, and a physical altercation ensued.

The other officers responded to Defendant's attack. During the struggle, Defendant swung his arms around and struck Investigator Williams on the head. Defendant put his arms around Investigator Turner's neck and bit his hand. Defendant also attempted to bite Corporal Novotny. The struggle lasted for more than three minutes before the officers were able to place Defendant in handcuffs. Subsequently, a medic responded to assist the injured parties. The altercation led to Investigators Williams and Turner requiring medical treatment. Investigator Williams received stitches for his head injury, and Investigator Turner was prescribed antibiotics for his bitten hand. The altercation prevented the officers from completing their investigation and another team was required to take their place.

A grand jury indicted Defendant for two counts of felony habitual misdemeanor assault, one count of felony assault inflicting physical injury on a law enforcement

officer, one count of felony assault inflicting serious bodily injury on a law enforcement officer, and two counts of RDO. Defendant's trial commenced on 25 April 2022.

At the conclusion of Defendant's trial, the jury found him guilty of two counts of felony habitual misdemeanor assault, two counts of felony assault inflicting physical injury on a law enforcement officer, and one count of RDO. The trial court sentenced Defendant to two concurrent terms of thirty-six months' supervised probation with a special condition to serve two split sentences of four months each. Defendant timely entered his notice of appeal.

II. Jurisdiction

This Court has jurisdiction to consider Defendant's appeal under N.C. Gen. Stat. § 15A-1444 (2023) and N.C. Gen. Stat. § 7A-27(b) (2023).

III. Analysis

Defendant's appeal raises several issues for our consideration. We address each of Defendant's concerns below. After careful review, we discern no error.

A. Self-Defense Instruction

Defendant first contends that the trial court erred or plainly erred by instructing the jury that he was not entitled to use self-defense if he was committing or attempting to commit a felony. Defendant argues that this instruction was erroneous because the only felonies supported by the evidence were the assaults for which he claimed self-defense. Assuming Defendant preserved this issue for review,

and assuming the trial court did commit error in its instruction, such error is not prejudicial.

During the charge conference, the trial court stated, “I do intend to list all of the circumstances that the State has asked me to list.” Defense counsel responded, “Yes, sir,” as the trial court continued explaining its intentions. The trial court completed its explanation and asked, “Does anyone have anything they want to say about that?” The discussion moved to other parts of the instructions when the State inquired about a footnote in N.C.P.I.—Crim 308.40, entitled “Self-Defense—Assaults Not Involving Deadly Force.” Footnote nine of N.C.P.I.—Crim 308.40 states “Pursuant to N.C. Gen. Stat. § 14-51.4(1), self-defense is also not available to a person who used defensive force and who was [attempting to commit] [committing] [escaping after the commission of] a felony. If evidence is presented on this point, then the instruction should be modified accordingly pursuant to N.C.P.I.—Crim. 308.90 to add this provision at this point in the substantive instruction.” (Brackets in original). In reference to this request, the trial court asked defense counsel, “What do you say, Mr. Wilson?” Defense counsel responded, “I’m not sure what power I have to stop it, so—but for the record, I’d say I’m not for that particular provision, Your Honor.”

Considering the context of the exchange among the prosecution, defense counsel, and trial judge—our analysis assumes defense counsel’s statement was sufficient to preserve the issue for appellate review. *See State v. McLymore*, 380 N.C. 185, 192, 868 S.E.2d 67, 73 (“[the defendant’s] objection to the substance of the trial

court's self-defense instruction was sufficient to preserve the causal nexus argument for appellate review."); *see also* N.C. R. App. P. 10(a)(1) ("In 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 if the specific grounds were not apparent from the context.").

"Whether a jury instruction correctly explains the law is a question of law, reviewable by this Court *de novo*." *State v. Barron*, 202 N.C. App. 686, 694, 690 S.E.2d 22, 29 (2010) (citation omitted). While we review questions of law *de novo*, "an 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) (cleaned up). Defendant maintains that a felony committed in self-defense cannot disqualify one from asserting self-defense. N.C. Gen. Stat. § 14-51.4 (2023).

In *McLymore*, our Supreme Court held "to disqualify a defendant from justifying the use of force as self-defense pursuant to [N.C. Gen. Stat.] § 14-51.4(1), the State must prove the existence of an immediate causal nexus between the defendant's disqualifying conduct and the confrontation during which the defendant used force." 380 N.C. at 197, 868 S.E.2d at 77. To do so, "[t]he State must introduce evidence that but for the defendant attempting to commit, committing, or escaping after the commission of a felony, the confrontation resulting in injury to the victim

would not have occurred.” *Id.* at 197-98, 868 S.E.2d at 77 (cleaned up). If the State introduces such evidence, the existence of a causal nexus is a jury determination, and the trial court must instruct the jury that “the State [is required] to prove an immediate causal nexus between a defendant’s attempt to commit, commission of, or escape after the commission of a felony and the circumstances giving rise to the defendant’s perceived need to use force.” *Id.* at 187, 868 S.E.2d at 70.

Although the State introduced the requisite evidence, the trial court did not instruct on an “immediate causal nexus between a defendant’s attempt to commit, commission of, or escape after the commission of a felony and the circumstances giving rise to the defendant’s perceived need to use force.” *Id.* Yet, the jury had another avenue to determine self-defense is not available to Defendant, including the situation where a defendant “[i]nitially provokes the use of force against himself or herself,” commonly known as the aggressor doctrine.” N.C. Gen. Stat. § 14-51.4 (2023); *State v. Hicks*, 385 N.C. 52, 60, 891 S.E.2d 235, 241 (2023). A defendant “may be considered the aggressor if they aggressively and willingly enter into a fight without legal excuse or provocation.” *Id.* (cleaned up). “When the evidence is conflicting, it is for the jury to determine whether the defendant was the aggressor.” *Id.* (citations omitted). And “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 385 N.C. at 60–61, 891

S.E.2d at 241 (quoting *State v. Mumma*, 372 N.C. 226, 239 n.2, 827 S.E.2d 288 (2019)) (internal quotation marks omitted). Notably, “North Carolina law does not require that a defendant instigate a fight to be considered an aggressor. Rather, even if his opponent starts a fight, a defendant who provokes, engages in, or continues an argument which leads to serious injury or death may be found to be the aggressor.” *State v. Lee*, 258 N.C. App. 122, 126–27, 811 S.E.2d 233, 237 (2018) (citations omitted). When we review “a trial court’s denial of a defendant’s request to exclude the aggressor instruction from the jury instruction on self-defense, the appellate court does not consider the evidence in a light favorable to the defendant, as it is the province of the jury to resolve any conflict in the evidence in that regard.” *Id.*

Here, the trial court instructed the jury, in part, on self-defense by stating:

Furthermore, self-defense is justified only if the Defendant was not the aggressor. Justification for defensive force is not present if the person who used defensive force voluntarily entered into the fight, or in other words, initially provoked the use of force against himself. If one uses abusive language towards one’s opponent, which considering all of the circumstances calculated and intended to bring on a fight, one enters a fight voluntarily.

Furthermore, the law does not excuse or justify the use of any force against the law enforcement officer who is lawfully acting in the performance of his official duties.

A law enforcement officer is not acting lawfully if he uses excessive force to effect an arrest. Therefore, in order for you to consider the defense of self-defense, you must first find that the officers used excessive force.

...

Self-defense is also not available to a person who used a defensive force and who was attempting to commit or committing a felony. If you find from the evidence beyond a reasonable doubt that, on or about the alleged date, Joel Turner was a law enforcement officer, that the Defendant intentionally assaulted Joel Turner, that the Defendant did so while Joel Turner was discharging an official duty of his office, that the Defendant knew or had reasonable grounds to know that Joel Turner was a law enforcement officer, then it will be your duty to return a verdict of guilty of assault on a law enforcement officer. If you do not so find or have a reasonable doubt as to one or more of these things, then it will be your duty to return -- your duty to return a verdict of not guilty. Even if you are satisfied beyond a reasonable doubt that the Defendant committed assault on a law enforcement officer by inflicting physical injury, or assault on a law enforcement officer, you may return a verdict of guilty only if the State has also satisfied you beyond a reasonable doubt that the Defendant did not act in self-defense.

Therefore, if the Defendant did not reasonably believe that the Defendant's action was necessary or appeared to be necessary to protect the Defendant from bodily injury or offensive physical contact, or the Defendant used excessive force, or the Defendant was the aggressor, or if the officers were acting lawfully, or if the Defendant was attempting to commit or was committing a felony, the Defendant's actions would not be excused or justified in defense of the Defendant.

If you do not so find or have a reasonable doubt that the State has proved any of these things, then the Defendant's action will be justified by self-defense, and it will be your duty to return a verdict of not guilty.

Considering the trial court's instruction, we hold that it was in the jury's province to resolve any conflict within the evidence because the State's evidence was sufficient for a jury to determine that Defendant was the aggressor. *See Lee*, 258 N.C. App. at 127, 811 S.E.2d at 237; *see also State v. Thomas*, 153 N.C. App. 326, 338-39, 570 S.E.2d 142, 149 (2002) (holding "defendant is not entitled to a self-defense instruction

because the evidence clearly establishes that defendant was the aggressor in the struggle with [law enforcement]”).

The evidence offered at trial tends to show that the officers arrived at the hotel to investigate a missing person. As the officers attempted to conduct their investigation, Defendant repeatedly engaged them both verbally, and eventually, physically. After Corporal Novotny raised his hand to block Defendant from entering the hotel’s front office, Defendant balled his fist, moved his hand back in a striking motion, and shoved Corporal Novotny aside. Defendant then struggled with investigators for over three minutes. During this struggle, Defendant struck Investigator Williams on the head, flailed his arms and fists, attempted to bite Corporal Novotny on the arm, placed his arm around Investigator Turner’s neck and head, knocked off Investigator Turner’s glasses, bit Investigator Turner’s hand causing his skin to break and bruise, placed Investigator Williams in a chokehold and headbutted him. Such evidence is sufficient for the jury to infer that Defendant acted as an aggressor when he purported to use self-defense. *See State v. Mumma*, 372 N.C. 226, 239 n.2, 827 S.E.2d 288 (2019) (determining “the evidence in this case permits the inference that defendant was the aggressor at the time he shot the victim”); *see also State v. Terry*, 329 N.C. 191, 199, 404 S.E.2d 658, 662-63 (1991) (holding “[a]lthough defendant’s evidence does not support the aggressor instruction, the State’s evidence supports it. By instructing jurors on the aggressor qualification, the trial court allowed the triers of fact to determine which testimony to believe[]”);

see also State v. Hoyle, 57 N.C. App. 288, 293-94, 291 S.E.2d 273, 276 (1982) (holding the trial court properly instructed the jury on the aggressor doctrine “based upon the above evidence by the State tending to show that defendant was the aggressor.”). Thus, we hold that even if the trial court committed error, it was not prejudicial since there is not a reasonable possibility that “had the error in question not been committed, a different result would have been reached at the trial. . . .” *Castaneda*, 196 N.C. App. at 116, 674 S.E.2d at 712.

B. Lawful Police Conduct Instruction

Defendant next argues the trial court erred by failing to render an instruction about the lawfulness of the officers’ attempt to arrest him. Defendant’s request deviated from the pattern jury instructions and thus qualified as a special instruction. “A request for a deviation from the pattern jury instruction would qualify as a special instruction and would need to be submitted to the trial court in writing.” *State v. McVay*, 287 N.C. App. 293, 300, 882 S.E.2d 598, 605 (2022) (cleaned up). “A trial court’s ruling denying requested special instructions is not error where the defendant fails to submit his request for instructions in writing.” *Id.* (cleaned up).

Here, Defendant did not submit a written request for instructions regarding the lawfulness of the officers’ attempt to arrest him. Instead, Defendant orally requested this particular instruction. Since his request was not submitted in writing, this issue was not preserved for our review. *See State v. Starr*, 209 N.C. App. 106, 113, 703 S.E.2d 876, 881, *aff’d as modified*, 365 N.C. 314, 718 S.E.2d 362 (2011)

(holding the trial court did not err because the defendant failed to submit their request for instructions in writing); *see also State v. Martin*, 322 N.C. 229, 237, 367 S.E.2d 618, 623 (1988) (“The defendant in this case did not submit his request for instructions in writing. We hold it was not error for the court not to charge on this feature of the case.”); *see also State v. Craig*, 167 N.C. App. 793, 794, 606 S.E.2d 387, 387 (2005) (“Defendant contends the trial court erred by denying his request to give a special instruction on the defense of justification of possession of a firearm by a felon. Where, as here, Defendant failed to submit the special instruction in writing, the trial court did not error by declining to give it.”).

Though unpreserved, we may review for plain error if a defendant specifically and distinctly contends the alleged error constitutes plain error—something Defendant did not do, and we therefore need not consider. *E.g., McVay*, 287 N.C. App. at 301, 882 S.E.2d at 605 (quoting *State v. Truesdale*, 340 N.C. 229, 233, 456 S.E.2d 299 (1995)) (“Defendant did not ‘specifically and distinctly’ allege plain error. Accordingly, this issue is not preserved for plain error review, and we cannot address it on appeal.”). Therefore, Defendant’s failures to submit the instruction request in writing and argue for plain error review on appeal precludes our review of this issue.

C. Motion for Mistrial

Third, Defendant contends that the trial court erred by denying his motion for a mistrial after the prosecution questioned him about internal affairs exonerating the officers following an excessive force investigation. After the prosecution asked the

question, the trial judge issued a curative instruction. Defendant later moved for a mistrial based on the question surrounding the internal affairs investigation, but his motion was denied by the trial court.

“The decision to grant or deny a mistrial rests within the sound discretion of the trial court and will be reversed on appeal only upon a clear showing that the trial court abused its discretion.” *State v. Hurst*, 360 N.C. 181, 188, 624 S.E.2d 309, 316 (2006) (cleaned up). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). We afford great deference to trial courts in considering motions for mistrials since they are “in a far better position than an appellate court to determine whether the degree of influence on the jury was irreparable.” *State v. King*, 343 N.C. 29, 44, 468 S.E. 2d 232, 242 (1996).

Where “a trial court acknowledges an evidentiary error and instructs the jury to disregard it, the refusal to grant a mistrial based on the introduction of the evidence will ordinarily not constitute an abuse of discretion.” *State v. Hauser*, 271 N.C. App. 496, 498–99, 844 S.E.2d 319, 322 (2020) (cleaned up). A proper curative instruction may “even cure constitutional errors.” *State v. Hines*, 131 N.C. App. 457, 462, 508 S.E.2d 310, 314 (1998).

The trial court’s instruction properly identified the evidence that the jury was to disregard—the findings from the internal affairs investigation. *See id.* at 462-463,

508 S.E.2d at 314 (finding no abuse of discretion by trial court because the jurors could “fully understand and comply with the instructions of the court, and are presumed to have done so.”). We also note that the trial court did not abuse its discretion because it took “immediate . . . curative action” to quarantine all inadmissible evidence. *State v. Barts*, 316 N.C. 666, 684, 343 S.E.2d 828, 840 (1986). We thus hold that Defendant has not overcome the presumption that the jury could understand and comply with the trial court’s curative instruction. *See State v. Upchurch*, 332 N.C. 439, 450, 421 S.E.2d 577, 583 (1992) (stating that “[w]hen a court properly instructs jurors not to consider certain statements, any prejudice is ordinarily cured”).

D. Motion to Dismiss

Fourth, Defendant argues the trial court erred by not dismissing the RDO charge. Specifically, Defendant maintains that “[a]ll the evidence presented at the trial regarding the obstruction or delay in the investigation had to do with the fight that occurred, not any yelling. There is no evidence to support that [Defendant’s] yelling delayed or obstructed the investigation.” Accordingly, Defendant maintains that “this conviction should be vacated.” The State countered that Defendant’s yelling—in conjunction with his other behavior—sufficed to sustain the RDO charge. Our *de novo* review reveals that the evidentiary record supports the RDO charge. *See State v. Golder*, 374 N.C. 238, 250, 839 S.E.2d 782, 790 (2020) (citation omitted)

(holding whether the State presented substantial evidence of each essential element of the offense is a question of law that this Court reviews *de novo*).

A trial court properly denies a motion to dismiss when “there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense.” *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). “The test for sufficiency of the evidence is the same whether the evidence is direct, circumstantial or both.” *Lynch*, 327 N.C. at 216, 393 S.E.2d at 814. In making this determination, courts consider the evidence in the light most favorable to the State. *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

With that deferential standard in mind, we now turn to the underlying charge. “A defendant commits the offense of resisting, delaying, or obstructing a public officer by willfully and unlawfully resisting, delaying or obstructing a public officer in discharging or attempting to discharge a duty of his office.” *State v. Harper*, 285 N.C. App. 507, 514, 877 S.E.2d 771, 778 (2022) (cleaned up). Our case law dictates that “[t]he conduct proscribed under [the RDO statute, N.C. Gen. Stat. §] 14-223 is not limited to resisting an arrest but includes any resistance, delay, or obstruction of an officer in the discharge of his duties.” *State v. Lynch*, 94 N.C. App. 330, 332, 380 S.E.2d 397, 398 (1989) (holding the defendant resisted officers by “continu[ing] to

struggle after the officers apprehended him” for the purpose of identifying him). *See also State v. Burton*, 108 N.C. App. 219, 225, 423 S.E.2d 484, 488 (1992) (explaining that obstruction may be direct or indirect opposition or resistance to an officer lawfully discharging his duty, and holding that the defendant resisted officers when he spoke in a “loud and hostile manner” while standing beside an officer’s patrol car because defendant’s behavior interfered with the officer’s attempt to use his radio to check the vehicle registration).

In this case, Defendant’s persistent pursuit of and yelling at law enforcement was sufficient to sustain the RDO charge. “Actions or even language which cause delays or obstruction in an officer’s investigation can constitute this offense.” *Harper*, 285 N.C. App. at 514, 877 S.E.2d at 778; *see also State v. Singletary*, 73 N.C. App. 612, 616, 327 S.E.2d 11, 14 (1985) (holding the defendants willfully obstructed police officers in discharging their duties when they advanced within six feet of an officer while also yelling and one was waving his fist).

Here, when law enforcement was trying to investigate a missing person, Defendant continually pursued Investigator Williams and requested his badge number. Defendant continued yelling at Officer Williams despite another officer attempting to diffuse the situation by providing his identification. Corporal Novotny then tried to keep Defendant from entering the office, yet Defendant persisted by pushing through, yelling and balling his fist. Officer Williams was, as a result, delayed and obstructed from continuing his investigation due to Defendant’s actions.

See Singletary, 73 N.C. App. at 616, 327 S.E.2d at 14. When viewing the facts in a light most favorable to the State, substantial evidence supports the finding that Defendant's actions obstructed Officer Williams from continuing his investigation. *See id.* It was then for the "jury to decide whether his conduct amounted to resisting, delaying, or obstructing the officers." *Harper*, 285 N.C. App. at 514, 877 S.E.2d at 778–79. We discern no error on the trial court's part in denying Defendant's motion to dismiss the RDO charge.

E. Right to Resist Unlawful Arrest Instruction

Defendant's final argument challenges another portion of the jury instructions. In particular, Defendant faults the trial court for not rendering a jury instruction on his right to resist an unlawful arrest when instructing the jury on the RDO charge.

"If a request is made for a jury instruction which is correct in itself and supported by evidence, the trial court must give the instruction at least in substance." *State v. Locklear*, 363 N.C. 438, 464, 681 S.E.2d 293, 312 (2009) (quoting *State v. Harvell*, 334 N.C. 356, 364, 432 S.E.2d 125, 129 (1993)). Yet our appellate rules make clear that "[f]or an alleged error with a trial court's jury instruction to be properly preserved for appellate review, a defendant must object to the instruction before the jury retires." *State v. Bryant*, 290 N.C. App. 243, 890 S.E.2d 745 (2023) (citing N.C. R. App. P. 10(a)(2)). "The objection must be stated 'distinctly' and must state 'the grounds of the objection.'" *Id.*

Here, when the trial court stated it would instruct the jury with N.C.P.I.—Crim. 230.30, entitled “Resisting, Delaying, or Obstructing a Public Officer-All Situations Other Than Arrest,” defense counsel stated, “I would have preferred 230.31, Your Honor.” The difference between N.C.P.I.—Crim. 230.30 and 230.31, entitled “Resisting Arrest-Lawfulness of Arrest,” is that the latter instructs on the right to resist an unlawful arrest. *Compare* N.C.P.I.—Crim. 230.30 *with* N.C.P.I.—Crim. 230.31. But defense counsel’s statement of their “preference” is not a distinct objection. *See Bryant*, 290 N.C. App. 243, 890 S.E.2d 745. Since Defendant did not preserve the issue for appeal, we may only review for plain error. *Id.*

“Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result.” *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (citation omitted). In other words, “[u]nder the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result.” *Id.* The record shows that Defendant cannot overcome such a high hurdle. “When analyzing jury instructions, we must read the trial court’s charge as a whole.” *State v. Fowler*, 353 N.C. 599, 624, 548 S.E.2d 684, 701 (2001). “We construe the jury charge contextually and will not hold a portion of the charge prejudicial if the charge as a whole is correct.” *Id.* “If the charge as a whole presents the law fairly and clearly to the jury, the fact that isolated expressions, standing alone, might be considered erroneous will afford no ground for

a reversal.” *State v. McWilliams*, 277 N.C. 680, 685, 178 S.E.2d 476, 479 (1971) (citation omitted).

Although not suiting Defendant’s preference on appeal, the trial judge instructed the jury on the lawful conduct of a law enforcement officer:

Furthermore, self-defense is justified only if the Defendant was not the aggressor. Justification for defensive force is not present if the person who used defensive force voluntarily entered into the fight, or in other words, initially provoked the use of force against himself. If one uses abusive language towards one’s opponent, which considering all of the circumstances calculated and intended to bring on a fight, one enters a fight voluntarily. Furthermore, the law does not excuse or justify the use of any force against the law enforcement officer who is lawfully acting in the performance of his official duties. A law enforcement officer is not acting lawfully if he uses excessive force to effect an arrest. Therefore, in order for you to consider the defense of self-defense, you must first find that the officers used excessive force.

While those instructions did not apply N.C.P.I.—Crim. 230.31, they did substantively present what Defendant contested: that the jury consider whether law enforcement acted unlawfully in restraining him. *See State v. West*, 146 N.C. App. 741, 744, 554 S.E.2d 837, 840 (2001) (citation omitted) (“[W]hile Defendant’s proposed jury instructions were certainly a correct statement of the law, the trial court’s jury instructions were proper as they presented in substance what Defendant had requested.”). Thus, Defendant cannot show that the trial court committed plain error.

IV. Conclusion

Assuming *arguendo* the trial court’s instruction on self-defense was erroneous, we cannot conclude that error was prejudicial. Additionally, the trial court did not

STATE V. NORMAN

Opinion of the Court

err in failing to instruct the jury about the lawfulness of the officer's attempt to arrest Defendant. The trial court also did not abuse its discretion in denying Defendant's motion for a mistrial. And the trial court did not err in denying Defendant's motion for a dismissal of his RDO charge. Finally, even assuming that trial court erred in declining to instruct the jury on Defendant's right to resist an unlawful arrest when providing instructions on that particular charge, he cannot show plain error. Accordingly, Defendant received a fair trial.

NO ERROR.

Judges WOOD and FLOOD concur.

Report per Rule 30(e).