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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-287

Filed 7 May 2025

Pitt County, No. 21CRS054459-730

STATE OF NORTH CAROLINA

v.

TANIKWA GRIFFIN, Defendant.

Appeal by defendant from judgment entered 27 July 2023 by Judge Jeffery B. Foster in Superior Court, Pitt County. Heard in the Court of Appeals 14 January 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Hunter E. Fritz, for the State.*

*Tin Fulton Walker & Owen PLLC, by Zachary Ezor, for defendant-appellant.*

STROUD, Judge.

Defendant appeals from a judgment convicting her of assault with a deadly weapon inflicting serious injury. Defendant argues the trial court erred by denying her motion to dismiss since she did not inflict serious injury on the victim and did not use a deadly weapon. We conclude there was no error.

**I. Background**

The State's evidence tended to show that Defendant and the victim, Tyler,<sup>1</sup> had two children together and had been in a relationship since 2010. Defendant and Tyler "occasionally" lived together in Tyler's apartment in Pitt County, North Carolina, but they were not living together on 31 July 2022. On the evening of 31 July, Defendant called Tyler to ask if she and a friend, Courtney, could come over to his apartment. Tyler said yes and Defendant and Courtney went to the apartment. They were listening to music when, at some point, Tyler referred to Defendant as a "guest" in the apartment. Defendant responded in a "sarcastic" manner, seemingly upset about being called a guest.

Tyler then left to go to a nearby convenience store to get more beer. Tyler testified that upon his return, Courtney started "to take up for [Defendant] and got a little disrespectful" and "as [Tyler was] trying to calm the situation down [Courtney] swings on [him] and it just turned ugly." Courtney had an ashtray in her hand during this initial altercation. Defendant and Courtney then went to the bathroom together for a few minutes. After Defendant and Courtney came out of the bathroom, they went back to Tyler's bedroom. Tyler was hit in the head with an ashtray but testified he was "not sure who swung the ashtray and clocked" him. Tyler testified that "blood start[ed] running" so he "[r]an immediately to [his] bathroom, grabbed a rag, ran water, and looked at [him]self in the mirror [to try] to stop the bleeding."

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<sup>1</sup> A pseudonym is used to protect the identity of the victim.

While Tyler was cleaning his wounds in the bathroom, Defendant and Courtney continued to threaten him. Defendant was still holding the ashtray at this time. Courtney then gave Defendant a knife from the kitchen. Defendant had the ashtray and the knife in her hands at this point. Tyler testified the knife was a “steak knife” and that it was serrated, and the ashtray was made of glass. Defendant was “[s]winging with the ashtray and jabbing with the knife and everything.” Defendant hit Tyler in the head with the glass ashtray one or two times but “[t]he initial blow is what did it for [him].” Tyler was also “hit” in the leg with the knife. Tyler was sitting on the couch and Defendant continued swinging the ashtray at him, hitting him in the wrist, “the side of [his] head and everything.” Tyler “sustained a few blows to [his] head” and eventually Tyler was able to escape out of the apartment after “playing dead.” Tyler’s neighbor heard the altercation and called the police. The police and EMTs arrived but Tyler was not transported to the hospital.

Officer Kurt Puerto responded to the scene. Officer Puerto testified that after arriving at the scene he saw Tyler, who

had a bloody rag in his hand and he was holding [the rag] up to his head and kind-of patting his head. I noticed that he had cuts on his head, blood on the top of the shirt over his clothes, and he kept patting his head trying to dab the blood.

While Tyler did not want medical attention, Officer Puerto called EMTs “because of the severity of the injuries that [Tyler] had.” Officer Puerto walked through the apartment and “noticed several different spots in the living room and in the bathroom

where there was blood on the floor.” Officer Puerto testified Tyler

had deep lacerations on the right side of his head. He also had bruising on the left side of his head in the back. There were a couple of knots on the back of his head that were starting to swell up. And then he had a cut on his wrist. And I believe it was his left leg, he had a stab wound.

On or about 12 September 2022, Defendant was indicted for assault with a deadly weapon with intent to kill or inflict serious injury (“AWDWIKISI”) and assault with a deadly weapon inflicting serious injury (“AWDWISI”).<sup>2</sup> Trial began on 26 July 2023 for one count of AWDWIKISI. Defendant moved to dismiss at the close of the State’s evidence based on insufficiency of the evidence to establish a deadly weapon was used, that Defendant intended to kill Tyler, or that Tyler suffered serious injuries. The trial court denied the motion. Defendant did not present any evidence and renewed her motion to dismiss, which the trial court again denied. The trial court instructed the jury on the charged offense, AWDWIKISI, as well as three lesser-included offenses of (1) AWDWISI, (2) assault with a deadly weapon with intent to kill, and (3) assault with a deadly weapon. On or about 27 July 2023, the jury returned a guilty verdict on the lesser-included offense of AWDWISI. Judgment was entered that same day on one count of AWDWISI. Defendant entered oral notice of appeal in open court.

## **II. Sufficiency of the Evidence**

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<sup>2</sup> While Defendant was initially indicted for one count of AWDWIKISI and AWDWISI, the State dismissed the count of AWDWISI before trial and proceeded only on the single AWDWIKISI charge.

Defendant argues that the trial court should have granted her motion to dismiss because she “did not inflict ‘serious injury’ with the kitchen knife” and the “ashtray did not qualify as a ‘deadly weapon.’” We disagree.

This Court reviews challenges to the sufficiency of the evidence de novo. 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 the defendant’s being the perpetrator of such offense. We review the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Court may consider both direct and circumstantial evidence, even when the evidence does not rule out every hypothesis of innocence.

*State v. Elder*, 278 N.C. App. 493, 499, 863 S.E.2d 256, 264 (2021) (citations, quotation marks, and brackets omitted).

Under North Carolina General Statute Section 14-32,

(a) Any person who assaults another person with a deadly weapon with intent to kill and inflicts serious injury shall be punished as a Class C felon.

(b) Any person who assaults another person with a deadly weapon and inflicts serious injury shall be punished as a Class E felon.

N.C. Gen. Stat. § 14-32(a)-(b) (2023). While Defendant’s motion to dismiss at trial was to the charge of AWDWIKISI under North Carolina General Statute Section 14-32(a) but she was convicted of the lesser-included offense of AWDWISI under Section

14-32(b), her arguments on appeal focus only on the elements of AWDWISI. And as it is proper to deny a motion to dismiss based on sufficiency of the evidence if the State provides substantial evidence of “each essential element of the offense charged, or of a lesser offense included therein[.]” *Elder*, 278 N.C. App. at 499, 863 S.E.2d at 264 (emphasis added), we will limit our review to the elements of “deadly weapon” and “serious injury” as Defendant only argues those two elements on appeal.

Defendant argues the knife did not cause serious injury since “the wound caused by the knife—[was] a ‘very small’ cut to [Tyler’s] leg” and the ashtray was not a deadly weapon since Tyler escaped the altercation “relatively unscathed.” Based on the evidence, which we must consider “in the light most favorable to the State, giving the State the benefit of all reasonable inferences” *id.*, we disagree with Defendant’s characterization of Tyler’s injuries and conclude there was sufficient evidence for the judge to determine that both the knife and the ashtray were deadly weapons. Defendant was only convicted of one count of AWDWISI, and the evidence showed that Defendant attacked Tyler with both the knife and the ashtray at the same time. Since we also conclude the injuries inflicted by the ashtray alone were sufficient for the jury to find serious injury, the injuries inflicted by the knife need not be serious injuries to support one count of AWDWISI.

#### **A. Deadly Weapon**

“A deadly weapon is generally defined as any article, instrument or substance which is likely to produce death or great bodily harm.” *State v. Sturdivant*, 304 N.C.

293, 301, 283 S.E.2d 719, 725 (1981) (citations and footnote omitted). “No item, no matter how small or commonplace, can be safely disregarded for its capacity to cause serious bodily injury or death when it is wielded with the requisite evil intent and force.” *Id.* at 301, n. 2, 283 S.E.2d at 725, n. 2. Defendant does not argue the knife was not a deadly weapon, and our caselaw is clear a steak knife would be considered a deadly weapon *per se*. *See id.* at 301, 283 S.E.2d at 725 (“The definition of a deadly weapon clearly encompasses a wide variety of knives. For instance, a hunting knife, a kitchen knife and a steak knife have been denominated deadly weapons *per se*.” (citations omitted)).

As to the ashtray,

[a]n instrument which is likely to produce death or great bodily harm under the circumstances of its use is properly denominated a deadly weapon. But where the instrument may or may not be likely to produce such results, according to the manner of its use, or the part of the body at which the blow is aimed, its allegedly deadly character is one of fact to be determined by the jury.

*State v. Joyner*, 295 N.C. 55, 64-65, 243 S.E.2d 367, 373 (1978) (citations omitted).

Unlike a knife, an ashtray is not a *per se* deadly weapon; thus, we must consider whether the evidence would support finding the ashtray to be a deadly weapon, based on “the manner of its use, or the part of the body at which the blow is aimed[.]” *Id.* The testimony indicated Defendant inflicted repeated blows to Tyler’s head with the glass ashtray. Defendant acknowledges these wounds “were admittedly more significant” than the injuries inflicted by the knife, although she debates whether the

injuries were considered serious injury. Tyler testified Defendant repeatedly swung the glass ashtray at his head and other parts of his body. Defendant asserts the injuries were not severe since Tyler “never lost consciousness and was able to leave the scene.” But the injuries to his head caused lacerations, bleeding, bruising, and knots, and made Tyler dizzy and disoriented; this evidence would allow the jury to determine the ashtray was used as a deadly weapon. The fact that Tyler remained conscious and was able to leave the scene does not mean the ashtray was not being used as a deadly weapon.

Thus, in “the light most favorable to the State[,]” there was substantial evidence that the ashtray was used as a deadly weapon, where it was used to repeatedly target Tyler’s head and caused injuries resulting in lacerations, bleeding, bruising, and knots. *Elder*, 278 N.C. App. at 499, 863 S.E.2d at 264; *see State v. Dew*, 270 N.C. App. 458, 465, 840 S.E.2d 301, 306 (2020), *aff’d as modified and remanded*, 379 N.C. 64, 864 S.E.2d 268 (2021) (concluding a defendant’s “hands, feet, and teeth were deadly weapons for the purposes of AWDWISI” when the defendant “struck the victim repeatedly with his hands and fists in her ear, nose, and head”).

## **B. Serious Injury**

“The serious injury element of [North Carolina General Statute Section] 14-32 means a physical or bodily injury.” *State v. Walker*, 204 N.C. App. 431, 446, 694 S.E.2d 484, 494-95 (2010) (citations, quotation marks, and brackets omitted).

Whether a serious injury has been inflicted is a factual



determination within the province of the jury. Among the factors that have been deemed relevant in determining whether serious injury has been inflicted are: (1) pain and suffering; (2) loss of blood; (3) hospitalization; and (4) time lost from work. Evidence of hospitalization is not, however, necessary for proof of serious injury. The cases that have addressed the issue of the sufficiency of evidence of serious injury appear to stand for the proposition that as long as the State presents evidence that the victim sustained a physical injury as a result of an assault by the defendant, it is for the jury to determine the question of whether the injury was serious.

*Id.* at 446-47, 694 S.E.2d at 495 (citations, quotation marks, and brackets omitted).

Here, as discussed above, Tyler was hit in the head multiple times with the ashtray, which caused bleeding, bruising, and knots, and Tyler testified he was “out of it” after the altercation. Tyler testified that the pain was not great and that he did not miss work but that it took him multiple days “to shake out the cobwebs” and that the gashes left scars on his forehead. Officer Puerto also testified about the blood coming from Tyler’s wounds and finding spots of blood throughout the apartment. Defendant heavily relies on the fact that Tyler did not go to the hospital in her argument as to serious injury, but *Walker* makes clear hospitalization is not “necessary for proof of serious injury.” *Id.* Even without considering the wound from the knife, which in comparison to the injuries from the ashtray was not as severe, the injuries from the ashtray alone are sufficient for a jury to find serious injury. Thus, just as in *Walker*, we “conclude that the State presented evidence that the victim sustained a physical injury as a result of an assault by the defendant, so that it was

for the jury to determine the question of whether the injury was serious.” *Id.* at 447, 694 S.E.2d at 495 (citations, quotation marks, and brackets omitted).

### **III. Conclusion**

The State submitted substantial evidence that a deadly weapon was used since Defendant repeatedly hit Tyler in the head with a glass ashtray, causing lacerations, bleeding, bruising, knots, and disorientation for several days after the altercation. Thus, the State submitted substantial evidence that a deadly weapon was used and Tyler received serious injuries. The trial court did not err in denying Defendant’s motions to dismiss based on sufficiency of the evidence.

NO ERROR.

Judges CARPENTER and GRIFFIN concur.

Report per Rule 30(e).