

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA11-489
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

STATE OF NORTH CAROLINA

v.

Cleveland County
Nos. 08 CRS 52051
08 CRS 52052

RODNEY THOMAS COSTNER

Appeal by defendant from judgments entered 15 April 2009 by Judge John G. Caudill in Cleveland County Superior Court. Heard in the Court of Appeals 13 October 2011.

Roy Cooper, Attorney General, by Susan K. Nichols, Special Deputy Attorney General, for the State.

Haral E. Carlin, for the defendant.

THIGPEN, Judge.

Rodney Costner ("Defendant") appeals from two convictions of assault with a deadly weapon inflicting serious injury arising out of a fight with Danny Sneed¹ in which Danny's wife, Crystal Sneed, was also injured. We must decide whether the

¹We note that Danny Sneed is also referred to as Bryan Charles "Chuck" Sneed in the trial transcript.

trial court (I) erred by denying Defendant's motion to dismiss the charge of assault with a deadly weapon inflicting serious injury on Crystal Sneed and (II) committed plain error by instructing the jury on the theory of transferred intent. After a review of the record on appeal, we find no error.

The State's evidence tends to show that on 18 April 2008, Defendant was arguing with his uncle, Gerald Costner, outside the home where his uncle lived. Danny Sneed approached the two men to try to break up the argument. Danny Sneed testified that he gave his pocketknife to Gerald Costner so Gerald Costner could protect himself. Shortly after, Defendant and Danny Sneed began to fight. Defendant admitted to having a knife during the fight and to stabbing Danny Sneed. Danny Sneed was stabbed seventeen times in his back, on his face, and across his hand. Defendant was also cut during the fight and received injuries to his head and abdomen. Although Defendant testified that Danny Sneed also had a knife during the fight, Danny Sneed stated that he did not have a knife. Additionally, the first police officer to respond to the scene, Deputy Keith Miller, testified that he retrieved a knife "from [Defendant's] hand[,] " but did not find any other weapons on or around Danny Sneed or Defendant.

As Defendant and Danny Sneed fought, Danny Sneed's wife, Crystal Sneed, went outside to break up the fight. When Crystal Sneed realized she had "blood coming out" of her, she ran back inside to discover she was bleeding from her arm and abdomen. Initially, Crystal Sneed told police officers she didn't know who stabbed her. Additionally, two witnesses who arrived at the scene after the fight testified they heard Crystal Sneed tell her husband "you tried to kill me again." At trial, however, Crystal Sneed testified that her stomach injury came "from a knife being swung at" her and that Defendant had the knife. As a result of her injuries, Crystal Sneed had to have her spleen removed and was in the hospital for approximately five days.

Defendant was charged with two counts of assault with a deadly weapon inflicting serious injury on Danny Sneed and Crystal Sneed. At trial, the jury found Defendant guilty on both charges. Defendant was sentenced to two consecutive sentences of 26 to 41 months imprisonment. Defendant appeals from these judgments.

I. Motion to Dismiss

Defendant first contends the trial court erred by denying his motion to dismiss because there was insufficient evidence to support the charge of assault with a deadly weapon inflicting

serious injury on Crystal Sneed. Specifically, Defendant appears to argue the State failed to prove that Defendant "intentionally inflicted an injury on Crystal Sneed" and that Defendant was the perpetrator of the offense against Crystal Sneed. We disagree.

We review the trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). "Upon 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. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quotation omitted), *cert. denied*, 531 U.S. 890, 121 S. Ct. 213, 148 L. Ed. 2d 150 (2000). "In reviewing challenges to the sufficiency of evidence, we must view 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." *Id.* at 378-79, 526 S.E.2d at 455 (internal citation and quotation omitted).

The elements of assault with a deadly weapon inflicting serious injury are "(1) an assault (2) with a deadly weapon (3) inflicting serious injury (4) not resulting in death." *State v. Allen*, 193 N.C. App. 375, 378, 667 S.E.2d 295, 298 (2008) (quotation omitted); see N.C. Gen. Stat. § 14-32(b) (2009).

A. Intent

Defendant first argues the State failed to prove that he "intentionally inflicted an injury on Crystal Sneed." We disagree.

An assault is the first element of assault with a deadly weapon inflicting serious injury, *Allen*, 193 N.C. App. at 378, 667 S.E.2d at 298, and "[i]ntent is an essential element of the crime of assault[.]" *State v. Dammons*, 120 N.C. App. 182, 185, 461 S.E.2d 6, 8 (1995) (quotation omitted). "[I]ntent may be implied from culpable or criminal negligence if the injury or apprehension thereof is the direct result of intentional acts done under circumstances showing a reckless disregard for the safety of others and a willingness to inflict injury." *Id.* (quotation omitted). "[U]nder the doctrine of transferred intent, it is immaterial whether the defendant intended injury to the person actually harmed; if he in fact acted with the required or elemental intent toward someone, that intent

suffices as the intent element of the crime charged as a matter of substantive law." *State v. Locklear*, 331 N.C. 239, 245, 415 S.E.2d 726, 730 (1992) (citations omitted).

Here, Defendant testified as follows regarding his fight with Danny Sneed:

We fight on the ground and rolling and trying to pin and stuff and fighting back when I felt a sharp pain in my right side. And I felt blood[.] . . . I'm bleeding from the side, blood's coming all into my eyes, all in my face[.] . . . I'm angry because of all that blood. I can't see. I pulled my knife out, go over his back, go over his shoulder and I -- I start hitting him in the back with my knife. Well, he struggled, trying to get my knife towards me again so I hit him across the face right there with mine -- my knife. And, uh, that's when Crystal steps in the picture.

Defendant's testimony demonstrates his intent to hit and to stab Danny Sneed with his knife. Under the doctrine of transferred intent, this intent to injure Danny Sneed suffices as the intent element for the assault on Crystal Sneed. Accordingly, the trial court did not err by denying Defendant's motion to dismiss on this ground.

B. Defendant as Perpetrator of the Offense

Defendant also contends the State did not prove that he was the person who stabbed Crystal Sneed. We disagree.

We recognize that there was contradicting evidence presented at trial about whether Danny Sneed had a knife during the fight. Defendant testified that Danny Sneed had a knife during the fight and that Defendant only pulled out his knife after Danny Sneed stabbed him first. However, Danny Sneed testified he gave his pocketknife to Gerald Costner before he began fighting with Defendant. Additionally, Deputy Miller testified that when he arrived at the scene, he retrieved a knife "from [Defendant's] hand[,] " but did not find any other weapons on or around Danny Sneed or Defendant. There was also contradicting evidence about whether Crystal Sneed knew who stabbed her. Crystal Sneed told Lieutenant Phillip Todd at the hospital that she didn't know who stabbed her, and two witnesses testified they heard Crystal Sneed tell her husband "you tried to kill me again." At trial, however, Crystal Sneed testified her injuries came "from a knife being swung at" her and that Defendant had the knife.

Although there were contradictions in the evidence presented at trial, "we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (quotation omitted). Moreover, such "[c]ontradictions and

discrepancies [in the evidence] do not warrant dismissal of the case but are for the jury to resolve.” *Id.* at 379, 526 S.E.2d at 455 (quotation omitted). Thus, we conclude there was substantial evidence of Defendant being the perpetrator of the offense, and the trial court did not err by denying Defendant’s motion to dismiss.

II. Jury Instruction on Transferred Intent

In his next argument on appeal, Defendant contends the trial court committed plain error by instructing the jury on the theory of transferred intent. We disagree.

Because Defendant failed to object to the jury instruction at trial and he argues plain error on appeal, we review the jury instruction for plain error. “To show plain error, [a] 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, or we must be convinced that any error was so fundamental that it caused a miscarriage of justice[.]” *State v. Garcell*, 363 N.C. 10, 35, 678 S.E.2d 618, 634 (quotations and quotation marks omitted), *cert. denied*, ___ U.S. ___, 130 S. Ct. 510, 175 L. Ed. 2d 362 (2009).

Defendant argues the theory of transferred intent was not supported by the evidence because there was insufficient

evidence that Defendant inflicted the injury on Crystal Sneed. As discussed previously, however, we hold there was substantial evidence that Defendant was the perpetrator of the offense. Moreover, the trial court did not err by instructing the jury on the theory of transferred intent because even if Defendant did not intend to stab Crystal Sneed, the evidence shows Defendant intended to hit and stab Danny Sneed with his knife. See *State v. Andrews*, 154 N.C. App. 553, 558, 572 S.E.2d 798, 802 (2002) (citations omitted) (stating that "an instruction on transferred intent is appropriate where an unintended victim is harmed").

NO ERROR.

Judges HUNTER, JR. and BEASLEY concur.

Report per Rule 30(e).