IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1304

Filed: 1 August 2017

Edgecombe County, Nos. 13 CRS 53358-59, 14 CRS 50829

STATE OF NORTH CAROLINA

v.

LAGLEESA TUNEANE HARRIS

Appeal by defendant from judgment entered 2 December 2015 by Judge Alma L. Hinton in Edgecombe County Superior Court. Heard in the Court of Appeals 2 May 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Alexandra M. Hightower, for the State.

Gilda C. Rodriguez for defendant-appellant.

DAVIS, Judge.

Lagleesa Tuneane Harris ("Defendant") appeals from her convictions for assault with a deadly weapon inflicting serious injury ("AWDWISI") pursuant to N.C. Gen. Stat. § 14-32(b), assault with a deadly weapon on a government official, resisting a public officer, misdemeanor larceny, and possession of stolen goods. On appeal, Defendant argues that the trial court erred by (1) failing to instruct the jury on lesser-

included offenses; (2) admitting hearsay testimony; and (3) denying her motion to dismiss based on insufficiency of the evidence as to the charge of AWDWISI. After careful review, we conclude that Defendant received a fair trial free from prejudicial error.

Factual and Procedural Background

The State presented evidence at trial tending to show the following facts: On the morning of 3 October 2013, Heather Martinez was working as a cashier at Macclesfield Grocery in Macclesfield, North Carolina when Defendant entered the store. Martinez observed Defendant enter and exit the store without purchasing any items. After Defendant left the store, Martinez noticed that "some lottery tickets were ripped off" of a nearby display. When Martinez looked out the window, she saw Defendant drive away from the store in a red Chevrolet HHR vehicle.

Martinez informed her supervisor, Sanjeev Kumar, about the incident. Together, they reviewed the store video surveillance footage, and Martinez filed a report of the incident with the Edgecombe County Sheriff's Office.

That afternoon, as Martinez was driving by the store, she observed the red Chevy HHR returning to the store's parking lot. Upon seeing Defendant enter the store, Martinez informed Kumar that Defendant was the individual who she believed had taken the lottery tickets earlier that day. Kumar contacted the Sheriff's Office, and Detective Ross Ellis responded to the call.

When Detective Ellis entered the store, he saw Defendant pulling tickets out of the lottery ticket dispenser. He approached her and asked, "what are you doing?" to which she responded, "I'm going to pay for these." Detective Ellis identified himself to Defendant as a law enforcement officer and told her to "stay here just a second until I can figure out what's going on." He noticed that Defendant was "acting so nervous at that point." She stated, "I'm going outside and talk [sic] to my husband."

Because she was not complying with his orders to remain in the store, Detective Ellis informed Defendant that she was under arrest, and she began "pushing against [him.]" He attempted to grab her right arm but was unable to maintain a hold on her. Detective Ellis and Defendant proceeded to engage in a physical confrontation that began at the doorway of the store and ended at the door of her vehicle. Detective Ellis testified that "[s]he dr[agged] me all the way out to the car."

During this altercation, several store employees and bystanders attempted to assist Detective Ellis in restraining Defendant. Martinez and Larry Heath, another store employee, were among the bystanders in the parking lot. Defendant ultimately reached her vehicle and sat down in the driver's seat with her two daughters present in the back seat. When Defendant sat down in the car, Detective Ellis was "still holding onto her [and] . . . laying in the car trying to fight for the gear shifter [sic]."

At this point, Defendant "managed to get the ignition turn[ed] on" and "finally managed to get [the vehicle] in reverse and that's when she started backing up." The car abruptly backed out of the parking space and collided with Heath. When Detective Ellis "heard a bump[,]" he "struck [Defendant] several times" with his elbow in order to gain control of the vehicle. Two bystanders then assisted Detective Ellis in "wrestl[ing] her to the ground." Once he had placed Defendant under arrest, Detective Ellis called for EMS to assist Heath, who had been knocked unconscious, fractured his wrist, and sustained injuries to his foot and ankle.

Detective Ellis subsequently conducted a search of Defendant's vehicle and purse. He found a driver's license belonging to a woman named Iva Taylor on the rear floorboard of the vehicle. Upon searching Defendant's purse, he discovered a medical prescription pad bearing the name of Dr. Daniel L. Crocker and a medical business card containing the name of Andrea Barfield, both of whom were identified as employees of the Eastern North Carolina Medical Group in Wilson, North Carolina. Detective Ellis subsequently called Barfield, and she informed him that Defendant was a patient at the Eastern North Carolina Medical Group. She also told Detective Ellis that "if [he] had a prescription pad that it had to have been stolen if it was blank."

On 2 February 2015, Defendant was indicted for AWDWISI, assault with a deadly weapon on a government official, resisting a public officer, misdemeanor

larceny, attempted misdemeanor larceny, simple assault, and two counts of possession of stolen goods (one relating to the driver's license and one regarding the prescription pad).

A jury trial was held beginning on 30 November 2015 before the Honorable Alma L. Hinton in Edgecombe County Superior Court. The State presented testimony from eight witnesses, including Martinez, Detective Ellis, Heath, and Taylor. The defense offered testimony from Defendant and her daughter, Zikira Harris. Defendant moved to dismiss the charges against her both after the State's case had concluded and at the close of all the evidence. Both motions were denied. During the charge conference, the State voluntarily dismissed the attempted misdemeanor larceny charge.

On 2 December 2015, the jury returned a verdict finding Defendant guilty of AWDWISI, assault with a deadly weapon on a government official, resisting a public officer, misdemeanor larceny, and one count of possession of stolen goods (regarding the medical prescription pad). The jury found Defendant not guilty as to the second count of possession of stolen goods (regarding the driver's license).

The trial court sentenced Defendant to a term of 25 to 42 months imprisonment for the AWDWISI conviction. The court consolidated the remaining convictions and sentenced Defendant to 16 to 29 months imprisonment but suspended the sentence

and placed Defendant on supervised probation for 36 months to begin at the expiration of her active sentence. Defendant filed a *pro se* notice of appeal.

Analysis

I. Appellate Jurisdiction

As an initial matter, we must determine whether we possess jurisdiction over this appeal. Defendant filed a handwritten letter indicating her intent to appeal but failed to serve a copy of the letter on the State as required by Rule 4(c) of the North Carolina Rules of Appellate Procedure. The notice of appeal also failed to designate the judgment being appealed as required by Rule 4(b). Defendant concedes that her written notice failed to conform to the requirements of Rule 4.

However, Defendant has filed a petition for writ of *certiorari* requesting appellate review of her convictions in the event that her notice of appeal is deemed to be insufficient to confer jurisdiction upon this Court. Pursuant to Rule 21(a)(1) of the Appellate Rules, this Court may, in its discretion, grant a petition for writ of *certiorari* and review an order or judgment entered by the trial court "when the right to prosecute an appeal has been lost by failure to take timely action . . . ." N.C. R. App. P. 21(a)(1).

Here, the State does not contend that it was misled by Defendant's defective notice of appeal and acknowledges that "it is within this Court's discretion whether to allow the petition . . . ." *See State v. Springle*, __ N.C. App. __, __, 781 S.E.2d 518,

521 (2016) ("[A] defect in a notice of appeal should not result in loss of the appeal as long as the intent to appeal can be fairly inferred from the notice and the appellee is not misled by the mistake." (citation, quotation marks, and ellipsis omitted)). In our discretion, we elect to grant Defendant's petition for writ of *certiorari* and proceed to address the merits of her arguments.

II. Defendant's Arguments

Defendant argues on appeal that the trial court erred by (1) failing to instruct the jury on the lesser-included offenses of assault inflicting serious injury and misdemeanor assault on a government official; (2) admitting hearsay testimony from Detective Ellis regarding the medical prescription pad; and (3) denying her motion to dismiss the charge of AWDWISI based on insufficiency of the evidence. We address each argument in turn.

A. Jury Instruction on Lesser-Included Offenses

Defendant first argues that the trial court erred by instructing the jury on the charges of AWDWISI and assault with a deadly weapon on a government official without also instructing the jury on the lesser-included offense for each charge. Specifically, she contends the trial court should have instructed the jury on (1) assault inflicting serious injury as a lesser-included offense for AWDWISI; and (2) misdemeanor assault on a government official as a lesser-included offense for assault with a deadly weapon on a government official. We disagree.

> It is well settled that a defendant is entitled to have a lesser-included offense submitted to the jury only when there is evidence to support it. The test in every case involving the propriety of an instruction on a lesser grade of an offense is not whether the jury could convict defendant of the lesser crime, but whether the State's evidence is positive as to each element of the crime charged and whether there is any conflicting evidence relating to any of these elements.

State v. Chaves, __ N.C. App. __, __, 782 S.E.2d 540, 542-43 (2016) (citation and brackets omitted).

"The elements of a charge under G.S. § 14-32(b) are (1) an assault (2) with a deadly weapon (3) inflicting serious injury (4) not resulting in death." *State v. Woods*, 126 N.C. App. 581, 592, 486 S.E.2d 255, 261 (1997) (citation and quotation marks omitted). "[A]n individual is guilty of assault with a deadly weapon on a government official where the individual: (I) commits an assault; (II) with a firearm or other deadly weapon; (III) on a government official; (IV) who is performing a duty of the official's office." *State v. Spellman*, 167 N.C. App. 374, 380, 605 S.E.2d 696, 701 (2004), *appeal dismissed and disc. review denied*, 359 N.C. 325, 611 S.E.2d 845 (2005).

Misdemeanor assault inflicting serious injury is a lesser-included offense of AWDWISI. *State v. Lowe*, 150 N.C. App. 682, 685, 564 S.E.2d 313, 315 (2002) (citations omitted). Similarly, "[b]ecause all of the essential elements of misdemeanor assault on a government official are also essential elements included in felony assault with a deadly weapon on a government official, it is a lesser included offense of that

felony." *State v. Smith*, 186 N.C. App. 57, 65, 650 S.E.2d 29, 35 (2007) (citation, quotation marks, and ellipsis omitted).

In the present case, Defendant contends that her trial counsel requested an instruction on the lesser-included offense of misdemeanor assault and the trial court failed to give this instruction. In the alternative, she requests that this Court review this issue for plain error in the event that we find her trial counsel failed to object to the trial court's instruction. The State argues, conversely, that because "Defendant neither requested instructions nor objected when they were not given[,]" Defendant has waived her right to appellate review, including plain error review.

Generally, "[a] trial court's decision not to give a requested lesser included offense instruction is reviewed *de novo* on appeal." *State v. Gettys*, 219 N.C. App. 93, 100, 724 S.E.2d 579, 585 (2012) (citation omitted). However, it is well established that "[a] defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct." N.C. Gen. Stat. § 15A-1443(c) (2015). Moreover, "a defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error review." *State v. Hope*, 223 N.C. App. 468, 472, 737 S.E.2d 108, 111 (2012) (citation and quotation marks omitted), *disc. review denied*, 366 N.C. 438, 736 S.E.2d 493 (2013).

Our Supreme Court has held that "a defendant may not decline an opportunity for instructions on a lesser included offense and then claim on appeal that failure to

instruct on the lesser included offense was error." *State v. Gay*, 334 N.C. 467, 489, 434 S.E.2d 840, 852 (1993); *see, e.g.*, *State v. Sierra*, 335 N.C. 753, 760, 440 S.E.2d 791, 795 (1994) (defendant was not entitled to challenge jury instruction on appeal where trial court asked if he desired lesser-included offense instruction and he stated three times that he did not want such an instruction because it was contrary to his theory of the case); *State v. Williams*, 333 N.C. 719, 727, 430 S.E.2d 888, 892 (1993) (defendant indicated unequivocally to trial court that he did not wish for jury to be instructed on lesser-included offense of second-degree murder); *see also State v. Thompson*, 359 N.C. 77, 104, 604 S.E.2d 850, 870 (2004) (invited error where defendant's attorney actively agreed to instructions trial court thought appropriate), *cert. denied*, 546 U.S. 830, 163 L. Ed. 2d 80 (2005); *State v. Wilkinson*, 344 N.C. 198, 214, 474 S.E.2d 375, 383 (1996) (defendant invited error where he asked for jury instruction and agreed to substitution of one word in requested instruction); *State v. Basden*, 339 N.C. 288, 302-03, 451 S.E.2d 238, 246 (1994) (defendant invited error where he requested trial court's instruction and stated that "he was satisfied with it"), *cert. denied*, 515 U.S. 1152, 132 L. Ed. 2d 845 (1995); *State v. Spence*, 237 N.C. App. 367, 376-77, 764 S.E.2d 670, 678 (2014) (defendant invited error where his attorney "actively participated in crafting the trial court's response to the jury question, overtly agreed with the trial court's interpretation . . . and denied the trial court's proposed clarification").

During the charge conference, the following exchange took place:

> THE COURT: All right. Assault with a deadly weapon inflicting serious injury, 208.15, the -- and I would replace victim with Larry Heath. And you're asking for a lesser included on the assault inflicting serious injury?
>
> [PROSECUTOR]: Again, I just included that for the sake of the defendant. I tend to think that --
>
> [DEFENDANT'S COUNSEL]: I have no objection to that.
>
> THE COURT: I'm sure you don't.
>
> [PROSECUTOR]: It would certainly be something that the defendant requested. I don't know, Judge. I mean, obviously, the State doesn't want a misdemeanor outcome in this case, but I think that the defendant is entitled to have the jury consider whether the vehicle was used as a deadly weapon. I think that's probably the main issue that's really left to decide. I don't know.
>
> THE COURT: I, in my preliminary instructions, I defined the motor vehicle as a deadly weapon.
>
> [PROSECUTOR]: As a deadly weapon.
>
> THE COURT: I just -- I mean, a motor vehicle is a deadly weapon.
>
> [PROSECUTOR]: I'm fine with it being that way as well, Your Honor.
>
> [DEFENDANT'S COUNSEL]: *Well, Judge, I'd ask for any instruction that gave the jury instruction as to, you know, if that is a deadly weapon* and I have not read the instruction today. *As long as it says something about that it's -- if that's the intended use, that should be considered a deadly weapon.* But I think there needs to be something as

to -- I think I probably need to read it . . . .

. . . .

[DEFENDANT'S COUNSEL]: . . . Your Honor, *the second paragraph in the instruction or the third element of the instruction, I think, is sufficient.*

THE COURT: Okay. All right.

. . . .

[DEFENDANT'S COUNSEL]: *And, of course, I would also like the third as request -- not request, but I think that's -- this is the language that I was making sure was in the instruction. That they consider the nature of the vehicle.*

THE COURT: So you're asking that I not say a motor vehicle is a deadly weapon and --

[DEFENDANT'S COUNSEL]: Well, I think the Court has already--

THE COURT: -- that instead I say in determining whether -- because I wouldn't say both. I wouldn't say a motor vehicle is a deadly weapon and then say in determining whether it's a deadly weapon you should consider the nature of the vehicle, the manner in which it was used and the size and strength of the defendant compared to the victim because that's not -- it's the size and strength of the car compared to the other victim and that doesn't --

[DEFENDANT'S COUNSEL]: Well --

[PROSECUTOR]: *Perhaps, what the Court might say is a motor vehicle or Chevrolet HHR can be a deadly weapon. And in determining whether the Chevrolet was a deadly weapon, you should consider the nature and the*

manner in which it was used.

THE COURT: All right.

[DEFENDANT'S COUNSEL]: *Yes, Your Honor*, that's --

THE COURT: All right.

[DEFENDANT'S COUNSEL]: -- *thank you, Mr. Rapp.*

[PROSECUTOR]: And I think that then the jury is free to consider how that motor vehicle was operated and *I think that would obviate the need for any lesser included offense.* They simply can consider how the vehicle was operated in this instance with respect to both the deadly weapon, both with respect to the officer as a government official and Mr. Heath.

[DEFENDANT'S COUNSEL]: *And Mr. Heath.*

[PROSECUTOR]: With the serious injury.

THE COURT: All right, I'll do that. . . .

. . . .

THE COURT: . . . And next we have the resist, delay and obstruct. No, I'm sorry. Assault on -- assault with a deadly weapon on a government official.

[PROSECUTOR]: And I think, yeah, I think that was a little bit earlier in the packet. I think it was maybe after the larceny. I think it was 208.95(b).

And I think it would be very similar other than I think the officer, obviously, it's the officer and not a serious injury involved. But I think if you would just plug in that Detective Ross Ellis is a law enforcement officer as a sworn deputy of the Edgecombe County Sheriff's Office.

THE COURT: All right.

[PROSECUTOR]: It would be the same language --

THE COURT: With regard to the deadly weapon.

[PROSECUTOR]: Yes.

[DEFENDANT'S COUNSEL]: *Yes.*

[PROSECUTOR]: Perhaps, inserting a motor vehicle can be a deadly weapon, a deadly weapon --

THE COURT: Yes.

[PROSECUTOR]: In determining etc [sic] cetera, et cetera. I think that would be sufficient.

THE COURT: And then 230.31, resisting arrest -- resisting a public officer.

[PROSECUTOR]: Yes, I think that would be correct, Your Honor.

THE COURT: All right.

[DEFENDANT'S COUNSEL]: *Just plug in the name.*

THE COURT: Yes. It's my intent to go through and where it says victim to put Ross Ellis or Larry Heath.

[DEFENDANT'S COUNSEL]: *No objection, Judge.*

THE COURT: All right.

(Emphasis added.)

Thus, although Defendant's counsel agreed with the proposal early in the above-quoted exchange to include a jury instruction on the lesser-included offense to the charge of AWDWISI, after further discussion of the proposed instructions with the prosecutor and the court, defense counsel shifted his focus to a request that the jury be allowed to determine whether Defendant had used her vehicle as a deadly weapon. The trial court then announced that it would, in fact, allow the jury to decide that issue. At that point, the prosecutor expressed his view that such an instruction "would obviate the need for any lesser included offense" instruction. Defense counsel did not express any disagreement with the prosecutor's statement. To the contrary, defense counsel expressed satisfaction with the prosecutor's suggested resolution of the issue.

In sum, during the charge conference, the trial court, the prosecutor, and Defendant's counsel thoroughly discussed the language to be included in the jury instructions. At the close of the conference, defense counsel indicated his agreement with the suggested language proposed by the prosecutor and did not challenge the prosecutor's statement that a lesser-included offense instruction would no longer be necessary. Accordingly, Defendant has waived her right to raise this argument on appeal. *See Williams*, 333 N.C. at 728, 430 S.E.2d at 893 (holding that defendant's invited error that occurred when his trial counsel did not request lesser-included offense instruction foreclosed relief on appeal).

B. Hearsay Testimony

Defendant next argues that the trial court plainly erred by allowing Detective Ellis to testify about an out-of-court telephone conversation he had with Barfield regarding the medical prescription pad he found in Defendant's purse. "[P]lain error analysis is the appropriate standard of review when a defendant does not object to the admission of evidence at trial." *State v. Rourke*, 143 N.C. App. 672, 675, 548 S.E.2d 188, 190 (citation omitted), *cert. denied*, 354 N.C. 226, 553 S.E.2d 396 (2001).

> For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (internal citations, quotation marks, and brackets omitted).

Defendant was charged with possession of stolen goods based on the discovery by Detective Ellis that a medical prescription pad was in her purse. "The elements of possession of stolen goods are: (1) possession of personal property; (2) which has been stolen; (3) the possessor knowing or having reasonable grounds to believe the property to have been stolen; and (4) the possessor acting with a dishonest purpose."

State v. Tanner, 364 N.C. 229, 232, 695 S.E.2d 97, 100 (2010) (citation and quotation marks omitted).

We have held that "whether someone is acting with a dishonest purpose is a question of intent." *State v. Brown*, 85 N.C. App. 583, 586, 355 S.E.2d 225, 228 (citation omitted), *disc. review denied*, 320 N.C. 172, 359 S.E.2d 57 (1987). A dishonest purpose "can be proven by direct or circumstantial evidence[,]" but "[t]here is no need to show that defendant intended to personally gain from his action." *State v. Withers*, 111 N.C. App. 340, 348, 432 S.E.2d 692, 698 (citations omitted), *disc. review denied*, 335 N.C. 180, 438 S.E.2d 207 (1993).

At trial, Detective Ellis testified as follows:

> [PROSECUTOR:] How about State's Exhibit 18? Did you conduct any follow-up with respect to the prescription pad and card?
>
> [DETECTIVE ELLIS:] I did. I called -- I called the person on the business card, the medical business card, Ms. Andrea Barfield at Eastern North Carolina Medical Group in Wilson and spoke with her.
>
> And, basically, learned -- all she basically told me was that [Defendant] was a patient at that facility and *that if I had a prescription pad that it had to have been stolen if it was blank.*

(Emphasis added.)

Defendant argues that Detective Ellis offered inadmissible hearsay testimony that had a probable impact on the jury's finding that she was guilty of misdemeanor possession of stolen goods. Hearsay is defined as "a statement, other than one made

by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. R. Evid. 801(c).

Detective Ellis's testimony regarding his out-of-court conversation was offered to prove that the prescription pad he found in Defendant's purse was stolen. Therefore, this statement was hearsay. Moreover, the State does not attempt to argue that any exception to the hearsay rule applies to the admission of this evidence. Instead, the State asserts that because "Defendant herself acknowledged deliberately taking the prescription pad from her doctor's office" the admission of Detective Ellis's testimony was not plain error.

During her cross-examination, Defendant testified as follows on this issue:

> [PROSECUTOR:] So State's Exhibits [sic] 18, this is a prescription pad. Are you a doctor or a physician's assistant?
>
> [DEFENDANT:] No, sir. It's not a full prescription pad. But I also have a sister with three young kids that I was keeping for her to go to work.
>
> And I also had a young daughter at the time and they went with me to my doctor's appointment and they was [sic] coloring on this. . . .
>
> . . . .
>
> [DEFENDANT:] The sheet that the kids colored a picture on. That's what it's missing. That's what this prescription pad is missing and it's not a pad. It's only three or four sheets that the kids snatched off the desk after the doctor left out [sic]. I told you that I was diagnosed with diabetes August of 2013. I took these from the kids because they had been coloring on it. The top sheet of it, it's gone.

> The kids had a picture on it.
>
> . . . .
>
> [DEFENDANT:] I don't know where the picture is now. You also checked and saw that I don't write prescriptions. . . .

While the admission of Detective Ellis's hearsay statement constituted error, Defendant has failed to convince us that it rose to the level of plain error. The hearsay statement did not suggest that anyone at the Eastern North Carolina Medical Group was aware of the specific circumstances of how the prescription pad ended up in Defendant's purse. Rather, Barfield's statement to Detective Ellis simply reflected the commonsense notion that patients at medical practices are not given blank prescription pads to take home with them — a proposition that would be evident to any rational juror.

Moreover, the jury heard Defendant's explanation for her possession of the prescription pad and had the opportunity to assess her credibility. By convicting her of the charge, it evidently found that the State had proven all of the elements of this offense.[1] Therefore, her argument on this issue is overruled.

C. Denial of Motion to Dismiss Based on Insufficiency of Evidence

[1] We note that Defendant is not challenging the trial court's denial of her motion to dismiss as to this charge. Rather, her sole argument concerns the admission of the hearsay statement, which directly related only to the second element of this offense.

Finally, Defendant argues that the trial court erred in denying her motion to dismiss the charge of AWDWISI based on insufficient evidence. Specifically, she contends that the State failed to prove that she "intentionally ran over Larry Heath." Thus, she argues, the State failed to prove the intent element of this crime. We disagree.

"When reviewing a defendant's motion to dismiss, this Court determines only whether there is substantial evidence of (1) each essential element of the offense charged and of (2) the defendant's identity as the perpetrator of the offense. Whether the evidence presented at trial is substantial evidence is a question of law for the court. Appellate review of a denial of a motion to dismiss for insufficient evidence is *de novo*." *State v. Fisher*, 228 N.C. App. 463, 471, 745 S.E.2d 894, 900-01 (internal citations and quotation marks omitted), *disc. review denied*, 367 N.C. 274, 752 S.E.2d 470 (2013).

> 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. The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both. Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence.

State v. Fritsch, 351 N.C. 373, 378-79, 526 S.E.2d 451, 455 (internal citations and quotation marks omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000).

"The elements of AWDWISI are: (1) an assault, (2) with a deadly weapon, (3) inflicting serious injury, (4) not resulting in death." *State v. Jones*, 353 N.C. 159, 164, 538 S.E.2d 917, 922 (2000) (citation omitted). Our Supreme Court has held that "a driver who operates a motor vehicle in a manner such that it constitutes a deadly weapon, thereby proximately causing serious injury to another, may be convicted of AWDWISI provided there is either an actual intent to inflict injury or culpable or criminal negligence from which such intent may be implied." *Id.* at 164-65, 538 S.E.2d at 922-23 (citation omitted).

"Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." *State v. Smith*, 150 N.C. App. 138, 142-43, 564 S.E.2d 237, 240 (2002) (citation omitted). "Culpable or criminal negligence has been defined as such recklessness or carelessness, proximately resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others." *Jones*, 353 N.C. at 165, 538 S.E.2d at 923 (citation and quotation marks omitted).

We have previously held that where a defendant operates a motor vehicle in a reckless or careless manner, intent to commit assault could be inferred. *See, e.g.*, *id.* (defendant possessed requisite intent to commit AWDWISI where he was operating his car in criminally negligent manner toward victims' vehicle in same lane of travel); *State v. Wade*, 161 N.C. App. 686, 691, 589 S.E.2d 379, 382 (2003) (defendant had

intent to commit AWDWISI where his attempt to pass vehicles "was in blatant disregard of safety concerns associated with that portion of the highway" and resulted in serious injuries), *disc. review denied*, 358 N.C. 241, 594 S.E.2d 33 (2004).

We find particularly instructive our decision in *Spellman*. In that case, an officer ordered the defendant to exit his truck. The defendant then backed his truck out of a parking space while the officer held onto the driver-side door. *Spellman*, 167 N.C. App. at 384, 605 S.E.2d at 703. As the car continued to move, the defendant repeatedly struck the officer. *Id.* at 385, 605 S.E.2d at 703.

On appeal, the defendant argued that the trial court erred by denying his motion to dismiss the charge of assault with a deadly weapon on a government official because the State failed to introduce sufficient evidence of intent. *Id.* at 384, 605 S.E.2d at 703. We concluded that "the evidence introduced by the State was sufficient to allow a jury to reasonably infer that defendant operated the truck dangerously and with reckless disregard for the safety of [the officer]." *Id.* at 385, 605 S.E.2d at 703. For this reason, we held that the trial court did not err in denying the defendant's motion to dismiss. *Id.*

Similarly, in the present case, the evidence presented by the State tended to show that Defendant turned on her vehicle's ignition despite Detective Ellis's repeated attempts to restrain her. While Detective Ellis's body was laying across Defendant in the driver's seat, Defendant put the vehicle into reverse. Detective Ellis

testified that Defendant "took off kind of abruptly" and approximated her speed as 15 miles per hour. At the time the vehicle moved in reverse out of the parking spot, Heath and two store employees were standing directly behind the vehicle. The SUV backed over Heath, causing serious injuries to him.

Taking the evidence in the light most favorable to the State — as we must — we conclude that the State presented sufficient evidence to allow the jury to reasonably infer that the intent element of AWDWISI was satisfied based on Defendant's operation of the vehicle with reckless disregard for the safety of Heath, Detective Ellis, and the other bystanders in the parking lot. *See id.* Accordingly, we hold that the trial court did not err in denying Defendant's motion to dismiss.

Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from prejudicial error.

NO PREJUDICIAL ERROR.

Judge STROUD concurs.

Judge BRYANT concurs in the result only.

Report per Rule 30(e).