IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-481

No. COA20-571

Filed 7 September 2021

Pender County, No. 17CRS051309

STATE OF NORTH CAROLINA

v.

DOUGLAS DONTAY PETERSON, Defendant.

Appeal by Defendant from judgment entered 6 August 2019 by Judge Frank Jones in Pender County Superior Court. Heard in the Court of Appeals 26 May 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc Bernstein, for the State.

Leslie Rawls for the Defendant.

DILLON, Judge.

¶ 1 Defendant Douglas Dontay Peterson appeals from judgment finding him guilty of first-degree murder.

I. Background

¶ 2 The evidence at trial tended to show as follows: During and leading up to June of 2017, Defendant's girlfriend had a feud with the victim Mr. Logan. Defendant's girlfriend and the victim would communicate over social media. There was evidence

that some of the communication by the victim towards Defendant's girlfriend was threatening in nature. Defendant did not personally know the victim.

¶ 3 On the night of 29 June 2017, the victim was hanging out with two of his friends. They drove to a convenience store. When they started to drive back, the car started to smoke and leak oil. They pulled off the road to tend to the car. The victim was on his phone while his friends inspected the car's engine.

¶ 4 Defendant and his girlfriend arrived at the scene. Defendant was the passenger; his girlfriend was driving. Defendant's girlfriend had a baseball bat in the backseat. Defendant's girlfriend spoke to the victim from her car. While Defendant's girlfriend and the victim were talking, Defendant grabbed the baseball bat from the backseat, approached the victim, and hit him in the ribs. The victim went down without fighting back. Defendant then hit the victim in the head four times. His girlfriend never exited the vehicle.

¶ 5 Defendant testified that he did not see anyone at the scene with a gun. The victim's friends went to their car to retrieve their own baseball bat and hit Defendant's girlfriend's windshield with it. At that point, Defendant and his girlfriend drove off.

¶ 6 Following the beating, the victim was unconscious and bleeding from the ears, nose, and mouth. A paramedic who arrived at the scene was "able to touch [the victim's] brain" due to his injuries. The victim was transported to the hospital with

life-threatening trauma. He never regained consciousness.

¶ 7 Defendant was indicted for first-degree murder. He was found guilty of this charge by a jury. Defendant timely appealed.

II. Analysis

¶ 8 Defendant makes several arguments on appeal. We address each in turn.

A. Perfect Self-Defense

¶ 9 Defendant first argues that the trial court erred in denying his request for an instruction on perfect self-defense.

¶ 10 We review a trial judge's decision to deny a defendant's request for jury instructions *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). A trial judge should only instruct a jury on defenses that are supported by the evidence at trial. *State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973). To establish perfect self-defense, four things are required:

> (1) it appeared to defendant and he believed it to be necessary to kill or use force against the victim in order to save himself from death or great bodily harm; and
>
> (2) defendant's belief was reasonable in that the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness; and
>
> (3) defendant was not the aggressor in bringing on the affray, i.e., he did not aggressively and willingly enter into the fight without legal excuse or provocation; and

> (4) defendant did not use excessive force, i.e., did not use more force than was necessary or reasonably appeared to him to be necessary under the circumstances to protect himself from death or great bodily harm.

State v. Greenfield, 375 N.C. 434, 441, 847 S.E.2d 749, 755 (2020) (brackets removed).

¶ 11 Defendant discusses the first two prongs together, arguing first that text messages and a photo of a firearm sent by the victim to Defendant's girlfriend were sufficient to create reasonable fear of imminent danger. We disagree.

¶ 12 Even in the light most favorable to Defendant, there is no indication that the victim sent any threatening text messages *while he was at the scene*. Defendant did text a picture of the firearm to Defendant's girlfriend, but this text was sent a week prior to the confrontation on 29 June 2017. As these alleged threats occurred days or weeks before the incident, they fail to demonstrate that Defendant was in reasonable and immediate fear for his safety, as is required to warrant a self-defense instruction. *See State v. Kinney*, 92 N.C. App. 671, 676, 375 S.E.2d 692, 695 (1989).

¶ 13 We also take issue with Defendant's repeated argument that he believed the victim to be armed with a firearm. Once on the scene, Defendant observed the victim for ten minutes and video evidence, captured by Defendant's girlfriend, made clear that the object the victim was holding was not a firearm. Additionally, when asked if he had seen "anyone with a gun there that night," Defendant testified that he had not. Defendant's own "claim that he thought [the victim] was reaching for a weapon"

is not sufficient in and of itself to entitle him to a jury instruction on self-defense. *State v. Williams,* 342 N.C. 869, 874, 467 S.E.2d 392, 394 (1996).

¶ 14 We note that the facts in this case are similar to those of *State v. Harvey*, 372 N.C. 304, 828 S.E.2d 481 (2019). In *Harvey*, the victim had verbally and physically threatened the defendant and had physically attacked him. *Id.* at 305-06, 828 S.E.2d at 482. After the initial confrontation, the defendant went into his home, retrieved a knife, re-engaged with the victim, and ultimately stabbed him to death. *Id.* at 306, 828 S.E.2d at 482. Our Supreme Court concluded that *at the time of the stabbing*, the defendant was not actually being attacked by the victim and as such did not fear great bodily harm or death such that an instruction on self-defense was warranted. *Id.* at 310, 828 S.E.2d at 485. Defendant attempts to distinguish this case from *Harvey*, but we find that argument unpersuasive. Here, the victim was unarmed and had not had any sort of physical altercation with Defendant.

¶ 15 As to the third and fourth factors of the *Greenfield* test, the evidence tends to show that Defendant was the initial aggressor. Our Supreme Court has made clear that "if one takes life . . . in a quarrel which he himself has commenced with intent to take life or inflict serious bodily harm, the jeopardy into which he has been placed by the act of his adversary constitutes no defense whatever, but he is guilty of murder." *State v. Crisp*, 170 N.C. 785, 793, 87 S.E. 511, 515 (1916).

¶ 16 Here, Defendant and his girlfriend willingly sought out the confrontation by

stopping their vehicle on the side of the road. Defendant's own statements make clear that he attacked the victim. As Defendant was clearly the aggressor, he was not entitled to an instruction on self-defense.

¶ 17 Even if Defendant actually feared for his safety, the force utilized was more than was required to neutralize any threat presented by the victim. On impact of Defendant's first swing, the victim fell to the ground and was immobilized. As such, the following strikes to the victim's head, which resulted in his death, were excessive.

¶ 18 Defendant similarly contends that he was entitled to a jury instruction regarding defense of others, which would require meeting all of the elements of perfect self-defense. *See Greenfield*, 375 N.C. at 441, 847 S.E.2d at 755. As we have concluded that those elements have not been met here, no such instruction was warranted.

B. Imperfect Self-Defense

¶ 19 Defendant alternatively contends that he was entitled to an instruction on imperfect self-defense. Imperfect self-defense applies in situations where the first two elements of perfect self-defense are present at the time of the killing, but the second two were absent. *Harvey*, 372 N.C. at 308, 828 S.E.2d at 484. For the same reasons discussed above, we conclude that the first two elements of perfect self-defense are not met. Therefore, the trial court did not err in failing to instruct the jury on imperfect self-defense.

¶ 20 Defendant acknowledges that a finding of imperfect self-defense serves to reduce murder to voluntary manslaughter. As such, Defendant's arguments regarding manslaughter and imperfect self-defense are one and the same. Our Supreme Court has adopted the position that "when the trial court submits to the jury the possible verdicts of first-degree murder based on premeditation and deliberation, second-degree murder, and not guilty, a verdict of first-degree murder based on premeditation and deliberation renders harmless the trial court's improper failure to submit voluntary or involuntary manslaughter." *State v. Price*, 344 N.C. 583, 590, 476 S.E.2d 317, 321 (1996). Here, the trial court submitted to the jury the possible verdicts of first-degree murder, second-degree murder, and not guilty.

¶ 21 As the jury returned a verdict of guilty of first-degree murder, we conclude that the trial court did not commit prejudicial error in failing to instruct the jury on voluntary or involuntary manslaughter.

III. Conclusion

¶ 22 We conclude that the trial court did not err in its choice of jury instructions.

NO ERROR.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).