IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-523

Filed 19 December 2023

Mitchell County, Nos. 22CRS192, 22CRS50092

STATE OF NORTH CAROLINA

v.

DONNA JEAN SELF, Defendant.

Appeal by defendant from judgment entered 18 January 2023 by Judge Gary M. Gavenus in Mitchell County Superior Court. Heard in the Court of Appeals 29 November 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Carolyn McLain, for the State-appellee.

Phoebe W. Dee for defendant-appellant.

GORE, Judge.

Defendant, Donna Jean Self, appeals the possession of methamphetamine judgment. Defendant was charged with possession of methamphetamine, and possession of drug paraphernalia. The jury returned a guilty verdict for possession of methamphetamine, and defendant pled guilty to attaining habitual felon status. Defendant seeks plain error review for whether the trial court erred by not

instructing the jury on a defense of compulsion, duress, or coercion. Upon review, we discern no plain error.

I.

On 21 March 2022, Officer Young pulled over defendant's vehicle for "fictitious plates." Officer Young asked defendant and the passenger (identified as Spencer Elliott) to exit the vehicle. As defendant stepped out of her vehicle, cash fell on the ground. As she reached to pick up the cash, a "baggy with three oval-shaped pills fell out of her bra." Officer Young questioned defendant about the pills; she claimed she had a prescription for the pills. Officer Young told defendant to shake out her bra, and upon complying, "a baggy with clear crystal-like substance" fell out of her bra. Upon questioning defendant about the baggy, defendant told Officer Young "it was probably methamphetamine." Defendant was arrested and indicted for possession of methamphetamine and possession of drug paraphernalia.

Defendant pled not guilty and testified at trial. She testified to a long history of domestic abuse with Spencer Elliott, her husband, including acts of kidnapping, broken bones, assault, and strangulation. Defendant testified that prior to the traffic stop, she stopped at a gas station and Elliott climbed into her car despite her protests and took her phone. Defendant testified she stepped out of the car but climbed back into the car when Elliott refused to get out or return her phone, because she did not want to be late to visit her daughter. When Officer Young initiated the traffic stop, defendant testified Elliott put "the stuff" (referring to the baggy of methamphetamine

and the three pills) into her hands and looked at her in a threatening way such that she felt she had no option, and she was very afraid. Defendant testified she placed "the stuff" in her bra.

Only Officer Young, the lab analyst, and defendant testified at trial. Defendant admitted to multiple prior convictions. During cross-examination, the State impeached defendant with additional prior convictions beyond what defendant admitted to on direct. Defendant did not request, and the trial court did not give a compulsion, duress or coercion instruction; defendant gave no objections to the jury instructions. Defendant was convicted of possession of methamphetamine and acquitted of possession of drug paraphernalia; defendant pled guilty to having attained habitual felon status. Defendant was sentenced to 38 months to 58 months imprisonment. Defendant orally and timely appealed the judgment.

II.

Defendant appeals of right pursuant to sections 7A-27(b) and 15A-1444(a). Defendant concedes she failed to object or obtain a ruling regarding a jury instruction on compulsion, duress, or coercion. Nonetheless, defendant asks us to review for plain error. Under plain error review,

> the appellate court must be convinced that absent the error the jury probably would have reached a different verdict. In other words, the appellate court must determine that the error in question tilted the scales and caused the jury to reach its verdict convicting the defendant. Therefore, the test for plain error places a much heavier burden upon the defendant than upon defendants who have preserved their rights by timely objection.

State v. Loftin, 322 N.C. 375, 380 (1988) (cleaned up). "In deciding whether a defect in the jury instruction constitutes plain error, the appellate court must examine the entire record and determine if the instructional error had a probable impact on the jury's finding of guilt." *State v. Odom*, 307 N.C. 655, 661 (1983) (cleaned up).

Defendant argues the trial court plainly erred by failing to instruct the jury on a defense of compulsion, duress, or coercion. The trial court has a duty to instruct the jury on all "substantive features of a case" regardless of whether either party requests such instruction. *Lofton*, 322 N.C. at 381. It is a substantive feature of the case if the evidence presented provides for every element of a given defense. *Id.* The trial court should give a duress instruction when defendant "presents evidence that she feared she would suffer immediate death or serious bodily injury if she did not so act." *State v. Burrow*, 248 N.C. App. 663, 666 (2016) (cleaned up). "Apprehension of loss of property, or of slight or remote personal injury, is no excuse. The danger must be continuous throughout the time when the act is being committed and must be one from which the defendant cannot withdraw in safety." *State v. Borland*, 21 N.C. App. 559, 564 (1974) (cleaned up). "[T]hreat or fear of future injury is insufficient." *Id.* (citation omitted). Further, the defense of duress is not available when the defendant "had a reasonable opportunity to avoid doing the act without undue exposure to death or serious bodily harm." *Burrow*, 248 N.C. App. at 666.

Looking to the whole record, and assuming *arguendo* the trial court erred by failing to instruct the jury on a defense of duress, we determine the error was not plain error. Defendant's uncorroborated testimony coupled with the impeachment of her multiple prior convictions, assist us in determining the missing instruction on duress was not what "titled the scales and caused the jury to reach its verdict convicting . . . defendant." *Lofton*, 322 N.C. at 380.

III.

For the foregoing reasons, we discern no plain error.

NO PLAIN ERROR.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).