IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-856

Filed 7 May 2024

Sampson County, No. 18CRS52520

STATE OF NORTH CAROLINA

v.

EDWARD ALLEN BEST, JR., Defendant.

Appeal by defendant from judgment entered 13 December 2021 by Judge Charles H. Henry in Superior Court, Sampson County. Heard in the Court of Appeals 19 September 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Haley A. Cooper, for the State.

Law Offices of Bill Ward & Kirby Smith, P.A., by Kirby H. Smith, III, for defendant-appellant.

STROUD, Judge.

Defendant appeals his judgment convicting him of voluntary manslaughter. Because we conclude the trial court did not err by instructing the jury on the aggressor doctrine, we conclude there was no error.

I. Background

The State's evidence tended to show that in October 2018 after inviting his estranged wife, Jane[1], over to his home, Defendant got into an argument with her. Jane had her three children with her at Defendant's home. Following the argument, Jane and her children tried to leave in a vehicle that Defendant had loaned her, but Defendant tried to stop her. Defendant turned the car off, tried to take the keys from Jane, and tried to force Jane and the children out of the vehicle. After Defendant squeezed Jane's wrist, Jane got out of the car. Jane's oldest son, Tom, then got out of the car and tried "to get [Defendant] off of" his mom. Defendant put both Tom and Jane's youngest son in a choke hold and Jane started fighting Defendant "to get off of [her] kids."

During the continued altercation, Tom spoke with his father, Rick, on the phone; Rick arrived about ten minutes later. Rick got out of his car and asked Defendant if he had put his hands on Tom. Defendant pulled Rick's hair and a physical fight ensued. Defendant started screaming "Glock," and Rick stopped fighting and tried to leave; the two were no longer physically engaged with one another. Defendant then shot twice at Rick; one bullet struck Rick in the back. Law enforcement arrived at the scene and Defendant admitted to shooting Rick, claiming self-defense. Rick died from the gunshot wound. A jury convicted Defendant of murder; judgment was entered; Defendant appeals.

[1] To protect their privacy, we have used pseudonyms for the people other than Defendant involved in the altercation.

II. Aggressor Doctrine

During the charge conference, the trial court stated it would give an aggressor instruction. Defendant objected. Defendant contends "the trial court erred by instructing the jury on the 'aggressor doctrine', when there was no evidence . . . [he] was the initial aggressor and . . . [Rick] never withdrew from the confrontation." (Capitalization altered.) Defendant contends Rick was the initial aggressor and thereafter

> someone pulled [Rick] off [him]. [Defendant] laid on the ground, trying to catch his breath and feeling woozy and dizzy, as [Rick] started to walk away. Then [Defendant] saw [Rick] turn around and come back toward him. [Defendant] put his hand on his gun. Seeing the gun, [Rick] told [Defendant], "you better pull it" and continued walking toward him. It was only then that [Defendant] fired his gun toward [Rick].

While Defendant directs our attention to many statements of law from cases, he does not analogize any case to his own. In other words, Defendant cites no case where he specifically contends an aggressor instruction was wrongly given.

We review the trial court's jury instructions *de novo*:

> This Court reviews jury instructions contextually and in its entirety. The charge will be held sufficient if it presents the law of the case in such manner as to leave no reasonable cause to believe the jury was misled or misinformed. Under such a standard of review, it is not enough for the appealing party to show that error occurred in the jury instructions; rather, it must be demonstrated that such error was likely, in light of the entire charge, to mislead the jury.

State v. McGee, 234 N.C. App. 285, 287, 758 S.E.2d 661, 663 (2014) (citations, ellipses,

and brackets omitted).

"When there is no evidence that a defendant was the initial aggressor, it is reversible error for the trial court to instruct the jury on the aggressor doctrine of self-defense." *State v. Juarez*, 369 N.C. 351, 358, 794 S.E.2d 293, 300 (2016) (citations omitted). Stated differently, "[w]hen there is . . . evidence that a defendant was the initial aggressor, it is [not] reversible error for the trial court to instruct the jury on the aggressor doctrine of self-defense." *Id.* Thus, the determination of whether to instruct on the aggressor doctrine requires the court to view the evidence in the light most favorable to the State;

> when a defendant's evidence tended to show he acted in self-defense, the trial judge was obligated to instruct on self-defense but because the State's evidence tended to show that defendant was the aggressor, he properly instructed further that self-defense would be an excuse only if defendant was not the aggressor.

State v. Lee, 258 N.C. App. 122, 127-28, 811 S.E.2d 233, 237 (2018) (citation and quotation marks omitted). While Defendant's argument focuses on viewing the evidence in a way supporting his version of the incident – as is appropriate when considering whether to instruct on self-defense – we must consider the evidence as presented by the State. *See id.* Defendant's evidence would entitle him to a self-defense instruction, and the trial court gave a self-defense instruction. But Defendant's evidence does not negate the State's evidence tending to show Defendant was the aggressor. It is the jury's duty to consider the evidence and decide if the self-

defense instruction was applicable and if the defendant was the aggressor. *See generally id.*

As explained recently in *State v. Corbett*,

> Simply stated, the aggressor doctrine denies a defendant the benefit of self-defense if he was the aggressor in the situation. *Juarez*, 369 N.C. at 358, 794 S.E.2d at 300. An individual who aggressively and willingly enters into the fight without legal excuse or provocation is properly deemed the aggressor in bringing on the difficulty. *State v. Mize*, 316 N.C. 48, 51-52, 340 S.E.2d 439, 441 (1986).
>
> Courts consider a variety of factors in determining which party was the aggressor, including the circumstances that precipitated the altercation; the presence or use of weapons; the degree and proportionality of the parties' use of defensive force; the nature and severity of the parties' injuries; or whether there is evidence that one party attempted to abandon the fight. *See, e.g., State v. Spaulding*, 298 N.C. 149, 155, 257 S.E.2d 391, 395 (1979) (determining that the victim was the aggressor in a fatal prison-yard knife fight where the victim continued to advance upon the defendant with his hand jammed into his pocket, while the defendant, who anticipated the attack and armed himself as a precaution, used no language tending to incite an affray and made no show of force); *State v. Washington*, 234 N.C. 531, 534, 67 S.E.2d 498, 500 (1951) (All the evidence offered at the trial below shows that the deceased, and not the defendant, was the aggressor. The defendant's evidence indicates that she was entirely free from fault and never fought willingly and unlawfully. Her evidence further shows that the deceased made a violent attack upon her. She begged the deceased to stop beating her, and it was only after he announced his intention to take her elsewhere and kill her that she stabbed him in a vital spot.).

269 N.C. App. 509, 566-67, 839 S.E.2d 361, 403 (2020) (quotation marks, ellipses, and brackets omitted).

We turn to some of the factors considered by the trial court to determine if an aggressor doctrine instruction was appropriate, *e.g.*, "the circumstances that precipitated the altercation; the presence or use of weapons; the degree and proportionality of the parties' use of defensive force; the nature and severity of the parties' injuries; or whether there is evidence that one party attempted to abandon the fight." *Id.* at 566, 839 S.E.2d at 403. Here, the State presented evidence Defendant would not let Jane leave and physically assaulted her and Tom. When Rick arrived, the altercation was ongoing; Defendant then struck Rick. A physical fight ensued. Defendant then yelled "Glock," implying he had a weapon. Rick retreated and had almost reached his car when Defendant shot twice toward Rick and hit Rick in the back. While Defendant claims he believed he was going to die during the altercation, he did not seek any medical attention and was coherent and able to speak to law enforcement shortly after he shot Rick. Thus, "the circumstances that precipitated the altercation" were Defendant's action of not allowing Jane to leave and striking her and her child. *Id.* Defendant was the only one to have and "use" a weapon. *Id.* Rick was much larger and stronger than Defendant so the evidence did show he "proportionally" was "winning" the fight and using a lot of force with his body after Defendant had pulled his hair. *Id.* As to "injuries," Rick died while Defendant did not require any medical attention. *Id.* Finally, after Defendant yelled, "Glock," the State's evidence showed Rick abandoned the fight and Defendant shot him in the back while he was retreating.

We hold the trial court properly concluded the State had presented sufficient evidence to support an aggressor instruction.[2] Although Defendant argues we should view the facts in accord with his narrative, as to the aggressor instruction, we do "not consider the evidence in a light favorable to the defendant, as it is the province of the jury to resolve any conflict in the evidence in that regard." *Lee*, 258 N.C. App. at 127, 811 S.E.2d at 237.

III. Conclusion

For the foregoing reasons, we conclude the trial court did not err.

NO ERROR.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).

[2] Defendant also argues the trial court erred in ordering Defendant to pay restitution. However, we need not address this argument because we have entered an order denying Defendant's petition for writ of certiorari to review this issue.