NO. COA12-225

NORTH CAROLINA COURT OF APPEALS

Filed: 16 October 2012

STATE OF NORTH CAROLINA

v. Hoke County
No. 09 CRS 052570

TINA MARIE MCMILLIAN

Appeal by Defendant from judgment entered 21 August 2011 by Judge James G. Bell in Hoke County Superior Court. Heard in the Court of Appeals 8 October 2012.

Attorney General Roy Cooper, by Assistant Attorney General Deborah M. Greene, for the State.

Mark L. Hayes for Defendant.

STEPHENS, Judge.

Defendant Tina Marie McMillian appeals from judgment entered following a jury verdict finding her guilty of one count of injury to personal property. The State's evidence tended to show that on the morning of 3 December 2009, Defendant and Tasha Lowery were in court for a hearing on Defendant's request for

restitution as a result of Lowery's conviction for injury to Defendant's personal property. The court denied Defendant's request.

After the hearing, Lowery encountered Defendant in the parking lot of a Food Mart. Defendant, who had a restraining order against Lowery, ran toward Lowery's vehicle as Lowery attempted to drive away. The two women exchanged words, and when Defendant retrieved a baseball bat from her vehicle, Lowery called the police. Defendant shattered several of Lowery's car windows with the bat. Lowery drove back to the courthouse where she contacted the authorities.

Defendant admitted hitting Lowery's car windows with the bat, but claimed she did so in self-defense. According to Defendant, Lowery drove into the Food Mart parking lot after she saw Defendant drive there. Defendant testified that Lowery threatened to run her over and that Defendant swung the bat at Lowery's approaching car to defend herself. Defendant explained that she feared Lowery based on previous incidents in which Lowery physically put her hands on Defendant, threatened to burn down her house, and scratched her vehicles with keys.

At the charge conference, defense counsel asked for an instruction on self-defense and the State agreed. Defense

counsel also asked the court to instruct the jury it "should consider [] the reputation, if any, of the victim for danger and violence[.]" The court denied the request and charged the jury on self-defense without reference to Lowery's reputation. The jury found Defendant guilty of one count of injury to personal property. The court sentenced Defendant to 45 days of imprisonment, suspended, with eighteen months of supervised probation. The court also required her to pay $718.53 in restitution. Defendant appeals.

Defendant contends the trial court erred in failing to instruct the jury that it could consider the victim's reputation in determining whether Defendant acted in self-defense. We disagree.

We first note that this issue is properly preserved for appeal as the court denied Defendant's request to alter the self-defense instruction. *See* N.C.R. App. P. 10(a)(2); *State v. West*, 146 N.C. App. 741, 743, 554 S.E.2d 837, 839 (2001) (holding that objections to jury instructions are preserved when a request to alter an instruction has been considered and refused by the trial court).

A judge must give a jury instruction requested by one of the parties if it is correct and supported by the evidence

presented at trial. *Id.* To obtain relief on appeal, an appellant must show that the instructions as given were both erroneous and prejudicial. *See State v. Maske*, 358 N.C. 40, 57, 591 S.E.2d 521, 532 (2004). "A non-constitutional error is prejudicial when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." *Id.* (citation and quotation marks omitted). Our Court reviews a trial court's decisions regarding jury instructions *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (citations omitted).

A victim's reputation concerns the community's opinion of him or her. *See State v. Ussery*, 118 N.C. 1177, 1180, 24 S.E.2d 414, 415 (1896). "Reputation is the estimation in which a person is held by others, especially the popular opinion." *Id.* Accordingly, "[b]efore a witness may testify to another's reputation, the witness must demonstrate that he has sufficient contact with the community to qualify him as knowing the general reputation of the person in question." Adrienne M. Fox, Admissibility of Evidence in North Carolina § 18-20 (4th ed. 2005).

In *State v. Jordan*, the defendant contended it was error for the trial court to exclude evidence of his knowledge of the victim's reputation for violence. 130 N.C. App. 236, 242, 502 S.E.2d 679, 683 (1998), *disc. review denied*, 350 N.C. 103, 531 S.E.2d 828 (1999). When asked whether he knew if the victim had a reputation in the community for violence, the defendant said he knew the victim had been involved in fights and stabbings and he had witnessed at least one fight. *Id.* at 243, 502 S.E.2d at 683. This Court held that "the defendant's answers to the questions were not evidence of the victim's reputation for violence[;] they were evidence of specific acts of violence by the victim of which the defendant had knowledge." *Id.*

Here, the trial court properly declined to alter the self-defense instruction because, as in *Jordan*, there was no evidence regarding Lowery's reputation in the community. Rather, Defendant testified only about specific acts committed by Lowery which Defendant perceived as threatening. Thus, the evidence presented at trial did not pertain to Lowery's reputation. Defendant's argument is overruled.

NO ERROR.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).