

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-123
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v.

Wayne County
No. 10 CRS 50827

LAURA GLASPIE,
Defendant.

On writ of certiorari to review judgment entered 13 January 2011 by Judge Arnold O. Jones II in Wayne County Superior Court. Heard in the Court of Appeals 29 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Oliver G. Wheeler IV, for the State.

Irving Joyner for defendant-appellant.

GEER, Judge.

Defendant Laura Glaspie appeals from a judgment entered upon her conviction for assault with a deadly weapon on a government official. She primarily contends on appeal that the trial court should have granted her motion to dismiss because the State failed to prove its allegation that her car was a deadly weapon. We hold, however, that when the evidence is viewed in the light most favorable to the State, as required by

our standard of review, the State presented sufficient evidence to allow a reasonable jury to find that the car was a deadly weapon and that the trial court, therefore, properly denied the motion to dismiss.

Facts

On 15 February 2010, Officer Philip French of the Goldsboro Police Department stopped defendant's vehicle for following his car too closely. After Officer French turned on his blue lights, defendant stopped her car in the lane of travel, but she did not pull over to the side of the road. As Officer French approached her window on foot, defendant asked, "What is this, 'harass me day'?" Because Officer French had trouble communicating with defendant due to her loud music, he asked her to turn the music down multiple times.

Officer French then issued defendant a citation for following too close. As he began to explain the citation, defendant snatched it out of his hand, interrupted his explanation, and again asked why he was harassing her. Defendant was upset and, according to Officer French, "practically yelling" at him.

While defendant was reading the citation, her car began to roll forward, and Officer French told her to stop the car because she was about to run over his foot. Defendant looked up

at Officer French, hit the accelerator, picking up more speed, and ran over Officer French's foot. Defendant stopped after one tire ran over Officer French's foot.

Officer French's shoes had dirt marks on them from defendant's tire. Officer French went to the city nurse for medical treatment, and the nurse determined that he had a minor injury. The nurse instructed Officer French to rest his foot and put ice on it.

Defendant was indicted for assault with a deadly weapon on a governmental officer. At trial, Officer French explained that a traffic stop typically occurs on the side of the roadway, but defendant had stopped her car in the middle of the street. Officer French testified that on this particular street, there was one lane of traffic in each direction with no median. Because defendant had not pulled over, traffic in each direction had to maneuver around the stopped vehicles. Officer French could not move back from defendant's car when the car moved forward because he "didn't want to step right in front of a car that was moving at 35 miles an hour."

The trial court instructed the jury on the charge of assault with a deadly weapon on a government officer, as well as the lesser included misdemeanor offense of assault on a government official. The jury found defendant guilty of assault

with a deadly weapon on a government official, and the trial court sentenced defendant to a presumptive-range term of 23 to 28 months imprisonment. Although defendant did not timely appeal, this Court allowed defendant's petition for writ of certiorari.

Discussion

Defendant argues that the trial court erred in denying her motion to dismiss. "'Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.'" *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980).

"In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d

211, 223 (1994). "This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

In order to prove that a defendant committed an assault with a deadly weapon on a government official in violation of N.C. Gen. Stat. § 14-34.2 (2011), the State must show that the defendant (1) committed an assault, (2) using a firearm or other deadly weapon, (3) on a government official, (4) who was performing a duty of his or her office. *State v. Spellman*, 167 N.C. App. 374, 380, 605 S.E.2d 696, 701 (2004). On appeal, defendant argues that the State failed to present sufficient evidence either that she used a deadly weapon or that Officer French was performing a duty of his office at the time of the assault.

Turning first to the deadly weapon issue, this Court has explained:

The North Carolina Supreme Court has defined a deadly weapon as any instrument which is likely to produce death or great bodily harm under the circumstances of its use. Sometimes, the deadly character of [a] weapon depends . . . more upon the manner of its use, and the condition of the person assaulted, than upon the intrinsic character of the weapon itself. When the deadly character of an instrumentality is dependent upon the particular circumstances of a case, the question is one of fact to be determined by a jury.

Smith, 186 N.C. App. at 62, 650 S.E.2d at 33 (internal citations and quotation marks omitted).

In arguing that the trial court should have granted her motion to dismiss for lack of evidence that her car was a deadly weapon, defendant relies upon cases addressing a wholly different issue: whether, when the defendant was charged with assault with a deadly weapon on a government officer, the trial court erred in failing to instruct the jury on the lesser included offense of assault on a government officer. See *State v. Spencer*, ___ N.C. App. ___, ___, 720 S.E.2d 901, 906 (2012) (upholding trial court's decision not to submit lesser included offense when officer testified that car was moving directly at him at high rate of speed); *State v. Clark*, 201 N.C. App. 319, 327, 689 S.E.2d 553, 559 (2009) (holding trial court committed plain error in failing to submit lesser included offense of assault on a government official when defendant's car pushed officer into patrol car, but patrol car was not damaged and officer was not severely injured); *State v. Batchelor*, 167 N.C. App. 797, 800, 606 S.E.2d 422, 424 (2005) (finding no error when trial court failed to instruct on lesser included offense based on evidence that automobile was driven directly at police officers' cars in their lane of travel).

When considering whether to instruct on a lesser included offense, the trial court applies an entirely different standard than when deciding whether to grant a defendant's motion to dismiss. With respect to submission of a lesser included offense, the court is required to view the evidence in the light most favorable to the defendant rather than, as in the motion to dismiss context, in the light most favorable to the State. See *Clark*, 201 N.C. App. at 327, 689 S.E.2d at 559 ("In order, however, to decide whether the deadly weapon issue should have been presented to the jury or decided as a matter of law, the evidence must be viewed in the light most favorable to defendant -- and not to the State.").

On appeal from a trial court's refusal to instruct on a lesser included offense, this Court determines whether "given the evidence presented at trial, although a jury could find that the [vehicle] was used as a deadly weapon, it could also find that the [vehicle] was not" *Id.* For a trial court to properly decline to instruct on the offense of assault on a government officer, the court must conclude that the vehicle was a deadly weapon as a matter of law. See *Batchelor*, 167 N.C. App. at 799, 606 S.E.2d at 424 ("Whether simple assault should have been submitted as an alternative verdict depends upon whether the [instrument] was a deadly weapon . . . as a

matter of law.'" (quoting *State v. Palmer*, 293 N.C. 633, 642, 239 S.E.2d 406, 412 (1977))).

Here, the trial court instructed on the lesser included offense of assault on a government officer and, therefore, necessarily concluded that a reasonable juror could, based on the evidence, find either that defendant's car was used under circumstances likely to produce death or great bodily harm or that it was not. In making that determination, the trial court was required to view the evidence in the light most favorable to the State. We agree, given that standard, that a reasonable jury could find, based on defendant's actions under the circumstances, that defendant's car was a deadly weapon.

The State presented evidence that when Officer French turned on his blue lights, defendant simply stopped her car in the lane of travel rather than pulling over to the edge of the road as is customary. Consequently, while Officer French was talking to defendant, cars were traveling as much as 35 miles per hour directly behind him. As defendant's car started to roll forward, Officer French directed her to stop because she was about to run over his foot, but, according to Officer French's testimony, defendant, in response, accelerated and ran over his foot.

Although Officer French suffered only a minor injury, a reasonable jury could find that defendant used her car in a manner likely to produce death or great bodily harm given that (1) defendant stopped her car in the lane of travel, requiring Officer French to stand in the middle of traffic; (2) defendant abruptly accelerated the car knowing Officer French was standing so close that his foot was under the car; and (3) defendant did so even though Officer French, if he tried to avoid being hit by defendant's car, would likely be hit by another car traveling as fast as 35 miles per hour. We hold, given this evidence, that the trial court properly determined that an issue of fact for the jury existed as to whether defendant's car was a deadly weapon.

Next, defendant argues that the State failed to present sufficient evidence that Officer French was "performing a duty of [his] office" at the time of the assault. *Spellman*, 167 N.C. App. at 380, 605 S.E.2d at 701. Because Officer French testified that he was attempting to explain the citation to defendant at the time defendant accelerated and ran over Officer French's foot, a reasonable juror could find that Officer French was performing a duty of his office at the time of the assault.

We, therefore, hold that the trial court properly denied defendant's motion to dismiss. Further, since defendant makes

no other argument on appeal, we conclude that defendant received a trial free of prejudicial error.¹

No error.

Judges ERVIN and DILLON concur.

Report per Rule 30(e).

¹We feel compelled to point out to counsel for the State that our Supreme Court abolished assignments of error four years ago on 2 July 2009. Although the State argues that defendant violated Rule 28(b)(2) of the Rules of Appellate Procedure by failing to specify the applicable assignment of error for each question presented and that defendant's arguments should be dismissed because defendant made only a broadside assignment of error, counsel for the State relied on outdated cases citing rules that have since been amended.