

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1401

Filed: 18 October 2016

Wake County, Nos. 13 CRS 230214-15

STATE OF NORTH CAROLINA

v.

JOSHUA SANCHEZ

Appeal by Defendant from judgment entered 17 April 2015 by Judge Michael J. O’Foghludha in Wake County Superior Court. Heard in the Court of Appeals 11 August 2016.

Attorney General Roy Cooper, by Assistant Attorney General Ebony J. Pittman, for the State.

Dunn, Pittman, Skinner & Cushman, PLLC, by Rudolph A. Ashton, III, for Defendant.

STEPHENS, Judge.

In this appeal from the judgment entered upon Defendant’s felony and misdemeanor assault convictions, he raises issues regarding motions to dismiss, jury instructions, and a restitution order. Because we conclude that the trial court gave the jury an instruction on flight which (1) was not supported by the evidence and (2) likely altered the jury’s verdicts, Defendant is entitled to a new trial.

Factual and Procedural History

The evidence at trial tended to show the following: The incident from which this case arises took place at approximately 5:30 p.m. on 8 December 2013 in the parking lot of a Food Lion grocery store on North Capital Boulevard in Raleigh. William Carter, Sr., (“Senior”) and his son, William Carter, Jr., (“Junior”) had arrived at the store separately and encountered each other in the parking lot. Senior was headed into the store to make a purchase, but Junior asked him to wait in the parking lot because he was waiting for someone to come out of the store. Senior noticed Defendant Joshua Sanchez, accompanied by a woman, come out of the Food Lion. Sanchez and Junior exchanged words, and then Junior struck Sanchez in the face.¹ Junior then yelled that he had been stabbed, at which point Senior grabbed Sanchez from behind, placed him in a headlock, and the two men fell to the ground. Senior was stabbed during the scuffle although he did not immediately realize it. Sanchez broke free from Senior and drove away from the store in his car. It was only as Senior helped his son into his car that Senior realized he had also been stabbed. As a result of their injuries, Senior was hospitalized for three days and Junior, who lost his spleen, was hospitalized for seven days. At trial, Junior described the weapon as a pocketknife, while Sanchez, as discussed below, claimed that it was a small kitchen knife purchased at the Food Lion. The knife was never recovered.

¹ Junior testified that he only “mushed” Sanchez’s face, while Sanchez described the blow by Junior as a punch.

STATE V. SANCHEZ

Opinion of the Court

Initially, during an investigation by officers with the Raleigh Police Department (“RPD”), Junior denied knowing his assailant, but the officers believed he was withholding information. After reviewing surveillance videos from Food Lion, RPD officers identified Sanchez, and, on 12 December 2013, RPD Detective Jared Silvious re-interviewed Senior and Junior, showing them a photographic array that included Sanchez. Junior identified Sanchez as the assailant and revealed that Sanchez sold one of Junior’s friends a TV that turned out not to work and then refused to refund the purchase price. Sanchez was arrested the following day.

On 24 February 2014, the Wake County Grand Jury indicted Sanchez on two counts of assault with a deadly weapon with intent to kill inflicting serious injury. The case came on for trial at the 8 April 2015 criminal session of Wake County Superior Court, the Honorable Michael J. O’Foghludha, Judge presiding. At the conclusion of the State’s case, including the testimony discussed *supra*, Sanchez moved to dismiss the charges against him for insufficiency of the evidence. The motion was denied. Sanchez then testified that he had gone to the Food Lion with his friend Barbara Mohr to buy some drinks and, while there, decided to also purchase a kitchen knife for his apartment. When Junior punched Sanchez and then Senior grabbed him, Sanchez did not know what was happening, and, in a panicked effort to escape what he believed to be an attack, grabbed the kitchen knife, flailed his arms around, and accidentally stabbed both men. Sanchez explained that, after

STATE V. SANCHEZ

Opinion of the Court

the incident, he did not immediately see Barbara and so he left her behind when he drove home.

Sanchez again moved to dismiss the charges at the close of all evidence, and the trial court again denied the motion. At the charge conference, Sanchez objected to the court giving a “flight” instruction regarding his departure from the Food Lion parking lot. The trial court overruled the objection and instructed the jury on flight. Sanchez did not request an instruction on “accident,” and no such instruction was given. However, the trial court did instruct the jury on self-defense. After two and one-half days of deliberation, the jury found Sanchez guilty of felony assault with a deadly weapon inflicting serious injury in the assault on Junior and the lesser-included misdemeanor assault inflicting serious injury in the stabbing of Senior.

At sentencing, Senior’s medical bills were introduced, along with a restitution worksheet that showed Senior was owed \$250 for damage to his jacket and \$60 for damage to his shoes. The trial court determined that Sanchez should pay \$310 for damage to Senior’s clothing as well as one-third of the medical bills with the remaining portion being a civil judgment. The total restitution bills were \$25,123.52. The trial court consolidated the convictions for judgment, sentenced Sanchez to 22-39 months in prison, suspended the sentence, and placed Sanchez on supervised probation for 36 months. Sanchez gave notice of appeal in open court.

Discussion

STATE V. SANCHEZ

Opinion of the Court

Sanchez argues that the trial court (1) erred in denying his motion to dismiss the assault charges for insufficiency of the evidence, (2) erred in instructing the jury on flight over his objection, (3) plainly erred by failing to instruct the jury on accident, and (4) erred in awarding restitution as a condition of probation for the misdemeanor assault conviction, when that conviction was consolidated for judgment with the felony assault conviction, and the sentence imposed was for the felony conviction. In regard to his second argument, Sanchez contends that the evidence at trial showed only that Sanchez left the scene and went home, taking no steps to avoid apprehension. In light of the evidence, we agree that it was error for the trial court to give the flight instruction, and, further, we conclude that there is a reasonable possibility that the erroneous instruction altered the jury's verdict.

“[Arguments] challenging the trial court’s decisions regarding jury instructions are reviewed *de novo* by this Court.” *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (citations omitted). “The prime purpose of a court’s charge to the jury is the clarification of issues, the elimination of extraneous matters, and a declaration and an application of the law arising on the evidence.” *State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973) (citations omitted), *cert. denied*, 418 U.S. 905, 41 L. Ed. 2d 1153 (1974). “It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence.” *State v. Shaw*, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988) (citation omitted). “Failure to instruct upon

STATE V. SANCHEZ

Opinion of the Court

all substantive or material features of the crime charged is error.” *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989) (citations omitted). “However, an error in jury instructions is prejudicial and requires a new trial only if 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.” *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (citation and internal quotation marks omitted).

A trial judge [should not] instruct a jury on [a] defendant’s flight unless there is some evidence in the record reasonably supporting the theory that [the] defendant fled after commission of the crime charged. *Mere evidence that [the] defendant left the scene of the crime is not enough to support an instruction on flight.* There must also be some evidence that [the] defendant took steps to avoid apprehension.

State v. Thompson, 328 N.C. 477, 489-90, 402 S.E.2d 386, 392 (1991) (citation and internal quotation marks omitted) (emphasis added). The act of leaving the scene of a crime and driving to one’s home, standing alone, is not sufficient evidence to support an instruction on flight. *State v. Holland*, 161 N.C. App. 326, 330, 588 S.E.2d 32, 36 (2003) (holding there was no evidence of an attempt to avoid apprehension justifying an instruction on flight where the “defendant left the crime scene with his accomplices and drove to the home of one of the accomplices. . . . [and then] was driven to a girlfriend’s residence”).

STATE V. SANCHEZ

Opinion of the Court

Here, the evidence is that, after stabbing Junior and Senior, Sanchez left the grocery store parking lot and, as the State concedes, simply drove to his home. He took no steps to avoid apprehension. Therefore, it was error for the trial court to instruct the jury on flight. *See id.* However, as noted *supra*, this error does not entitle Sanchez to a new trial unless we conclude that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial” *See Castaneda*, 196 N.C. App. at 116, 674 S.E.2d at 712 (citation and internal quotation marks omitted).

In this case, Sanchez did not dispute the most of significant facts regarding the assault charges he faced, to wit, that during a struggle he stabbed Junior and Senior with a knife, causing them serious injuries that fell short of death. Instead, Sanchez’s defense was based on the theory that he was attacked by Junior, struggled against Junior and Senior in an effort to defend himself, and stabbed the two men during the affray either by accident or in self-defense. Regarding the physical actions that occurred in the Food Lion parking lot, both the State’s and Sanchez’s evidence were largely consistent with Sanchez’s theory of the case. Thus, the critical question for the jury was whether they found credible Sanchez’s report of his mental state during the incident—the intent motivating his actions. Simply put, if they believed Sanchez’s account that he was trying to defend himself from what he perceived to be an unprovoked attack and that the stabbing of Junior and Senior was either self-

STATE V. SANCHEZ

Opinion of the Court

defense or the unintentional result of his struggle to escape, the jurors could have acquitted him on the ground of either self-defense or accident.

In light of the disputed issues at trial, the court’s unsupported instruction—that “evidence of flight may be considered . . . in determining whether the combined circumstances amount to an admission or show a consciousness of guilt”—offered the jury an improper basis from which to make an inference regarding the dispositive question of Sanchez’s mental state and intent. Thus, we conclude that “there is a reasonable possibility that, had the [trial court not given the unsupported flight instruction], a different result would have been reached at the trial” *See id.* (citation and internal quotation marks omitted). *Compare State v. Campos*, __ N.C. App. __, __, __ S.E.2d __, __ (2016), *available at* 2016 N.C. App. LEXIS 775, *14-15 (finding an unsupported flight instruction was prejudicial where the dispositive issue was whether an assault on a child was intentional because “[p]ermitting the jury to consider [the] defendant’s flight together with all other facts and circumstances to show a consciousness of guilt created a reasonable possibility that the jury deemed consciousness of guilt synonymous with intentional, thereby allowing it to insert the former as proof of the latter”) (internal quotation marks and ellipses omitted) *with State v. Wright*, 151 N.C. App. 493, 499, 566 S.E.2d 151, 155 (2002) (finding no prejudice resulting from an arguably erroneous flight instruction given in a second-degree murder case where the critical issue was the identity of the killer rather than

STATE V. SANCHEZ

Opinion of the Court

the intentionality of the shooting, and “the evidence in the record [was] such that the instruction had a negligible effect on the jury’s determination of [the] defendant’s guilt”). Accordingly, Sanchez is entitled to a new trial. In light of this holding, we do not address Sanchez’s remaining arguments.

NEW TRIAL.

Judges McCULLOUGH and ZACHARY concur.

Report per Rule 30(e).