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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-122

Filed: 4 October 2016

Jones County, No. 14 CRS 50017

STATE OF NORTH CAROLINA

v.

BRENDA SANDERS LANCLOS

Appeal by defendant from judgment entered 6 August 2015 by Judge Charles H. Henry Jr., in Jones County Superior Court. Heard in the Court of Appeals 8 August 2016.

Attorney General Roy Cooper, by Assistant Attorney General Neal T. McHenry, for the State.

Ward, Smith & Norris, P.A., by Kirby H. Smith, III; and Law Offices of Thomas A. Kellis, by Thomas A. Kellis, II, for defendant-appellant.

CALABRIA, Judge.

Brenda Sanders Lanclos (“defendant”) appeals from jury verdicts finding her guilty of assaulting a law enforcement officer inflicting physical injury and guilty of resisting arrest. We conclude that defendant received a fair trial, free from error.

I. Background

On 2 January 2014, defendant went to a town meeting at the Maysville Town Hall with her son, Joaquin. Around the same time, Officers Karen Lee (“Officer Lee”),

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Michelle Hopkins (“Officer Hopkins”), Zachary Bonar (“Officer Bonar”), Anthony Thomas (“Officer Thomas”), as well as Deputy D. Pridgen (“Deputy Pridgen”) of the Maysville Police Department (“MPD”) were gathered in full uniform outside of the Maysville Town Hall for the purpose of arresting a number of individuals who had outstanding warrants, including defendant and Joaquin. After Joaquin left the town meeting, the officers approached him and attempted to place him under arrest. After defendant left the town meeting, she witnessed the officers placing Joaquin under arrest and began yelling profanities at the officers. At this time, Officer Lee confronted defendant, informed her that he had an outstanding warrant for her arrest for harboring a fugitive, and attempted to place defendant under arrest.

When Officer Lee directed defendant to place her hands behind her back, defendant refused and twice snatched her arm away from Officer Lee’s grasp. Because Officer Lee was struggling to restrain defendant as he was attempting to take her into custody, Deputy Pridgen, Officer Hopkins, and Officer Bonar came to assist. When Officer Bonar grabbed defendant’s left arm and attempted to handcuff her, defendant swung her right arm backwards and struck Officer Bonar in the face. Soon after, the officers restrained defendant, arrested her, and placed her into custody. Defendant was charged with resisting arrest and assaulting a law enforcement officer inflicting physical injury.

On 17 November 2014, a grand jury indicted defendant for one count of assaulting a law enforcement officer inflicting physical injury against Officer Bonar, two counts of resisting a public officer, and one count of felony harboring an escapee. On 12 June 2015, the State dismissed the charge of felony harboring an escapee and one count of resisting a public officer. On 22 July 2015, defendant subpoenaed Officer Bonar to appear and testify in court, but Officer Bonar did not appear at the trial.

On 6 August 2015, the case came on for trial before the Honorable Charles H. Henry, Jr. of Jones County Superior Court. On that same day, the jury returned verdicts finding defendant guilty of assaulting a law enforcement officer inflicting physical injury and guilty of resisting arrest. The trial court sentenced defendant to a minimum of six months and a maximum of seventeen months to be served in the North Carolina Division of Adult Correction, suspended the sentence, and placed defendant on supervised probation for eighteen months. Defendant's supervised probation included the regular conditions of probation as required by N.C. Gen. Stat. § 15A-1343(b) and, as special conditions of probation, defendant was ordered to report to anger management class and avoid assaulting law enforcement officers. The trial court also ordered that her probation be transferred to New York. Defendant appeals.

II. Analysis

On appeal, defendant contends that (1) her constitutional right to confront her accuser was violated when the trial court allowed her trial to proceed without Officer

Bonar being present, (2) the trial court erred in denying her motion to dismiss the assault on a law enforcement officer charge, and (3) the trial court committed plain error in instructing the jury on this charge. We disagree.

A. Constitutional Claim

Defendant contends that her constitutional right to confrontation was violated on the grounds that the officer she was charged with assaulting, Officer Bonar, failed to testify at trial. However, because defendant has failed to advance this constitutional argument at trial, she has failed to preserve this issue for appellate review. *See State v. Chapman*, 359 N.C. 328, 366, 611 S.E.2d 794, 822 (2005) (“Constitutional error will not be considered for the first time on appeal.”). Therefore, we overrule defendant’s challenge.

B. Motion to Dismiss

Defendant contends that the trial court erred by denying her motion to dismiss the charge of felonious assault on a law enforcement officer. Specifically, defendant asserts that the State produced insufficient evidence that Officer Bonar suffered a physical injury. We disagree.

The standard of review of a motion to dismiss for insufficient evidence “is whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant’s being the perpetrator of such offense.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). “Substantial

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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). This Court reviews the evidence “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).

Felonious assault on a law enforcement officer requires that the State prove: (1) defendant assaulted (2) a law enforcement officer, (3) who was discharging or attempting to discharge his or her official duties; and (4) inflicted a physical injury on the officer. N.C. Gen. Stat. § 14-34.7(c)(1) (2013); *see also* N.C.P.I.—Crim. 208.95C (2015). “Physical injury” is defined as “cuts, scrapes, bruises, or other physical injury which does not constitute serious injury.” N.C. Gen. Stat. § 14-34.7(c). Defendant challenges only that the State’s evidence was insufficient to satisfy the element that Officer Bonar suffered a “physical injury.” We disagree.

In the instant case, Officers Lee, Thomas, and Hopkins each testified at trial that they witnessed defendant swing her closed right fist backward and strike Officer Bonar in the face near his jaw, as Officer Bonar attempted to restrain her. After the strike, Officer Bonar took a step back and Officer Thomas took a step forward with Officer Hopkins to handcuff defendant. Officers Lee, Thomas, and Hopkins testified that because of defendant’s strike, Officer Bonar had a visible red mark on his face. Moreover, Officer Thomas testified that he took two photographs of Officer Bonar’s

face at the magistrate's office shortly after the incident. The State introduced these two photographs, which were admitted into evidence and authenticated by Officers Lee and Thomas at trial. Although these pictures were not included in the record on appeal, according to the trial transcript, the photos depicted the red mark that developed on Officer Bonar's face due to defendant's strike. Officer Lee also testified that the red area on Officer Bonar's face "later turned into a bruise on the right side of his face."

When viewed in the light most favorable to the State, substantial evidence was presented to allow a reasonable juror to conclude that defendant's closed-fist strike to Officer Bonar's face inflicted a "physical injury" sufficient to establish the challenged element of the offense. Therefore, the trial court did not err in denying defendant's motion to dismiss. Defendant's argument is overruled.

C. Jury Instruction

Defendant contends that the trial court committed plain error by instructing the jury that "[a]ttempting to arrest a person charged in an outstanding warrant is an official duty of a law enforcement officer[.]" when there was some evidence that defendant's arrest was not lawful. Specifically, defendant contends that "it is possible [Officer] Thomas' warrants on [defendant] were sworn out in bad faith, as evidenced by [Officer Thomas'] reprimand, reduction in rank[,] and termination as a result of

his dealings with [defendant].” However, we hold that defendant is not entitled to appellate review of this issue and overrule this challenge.

Generally, “[w]here a defendant tells the trial court that he has no objection to an instruction, he will not be heard to complain on appeal.” *State v. White*, 349 N.C. 535, 570, 508 S.E.2d 253, 275 (1998) (citing *State v. Wilkinson*, 344 N.C. 198, 213, 474 S.E.2d 375, 396 (1996)); *see also State v. Thompson*, 359 N.C. 77, 103, 604 S.E.2d 850, 869 (2004) (“To the extent that defendant agreed with the trial court’s manner of instruction, defendant has invited any alleged error, and he may not obtain relief from such error.”). Moreover, pursuant to N.C. Gen. Stat. § 15A-1443(c) (2015), “[a] defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.” “Thus, a defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error.” *State v. Goodwin*, 190 N.C. App. 570, 574, 661 S.E.2d 46, 49 (2008) (citation and quotation marks omitted).

During the charge conference, the following exchange occurred:

THE COURT: . . . Third, that the defendant did so while the law enforcement officer was - - it’s got discharging or attempting to discharge his official duties. I’ll ask input from the State as to how they want the instructions to read. The indictment alleges both, I believe.

[THE STATE]: I would say at the time I think he was attempting to discharge a duty of his office.

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THE COURT: Okay. I'll put that. Mr. Smith, any comment?

[DEFENSE COUNSEL]: No sir, that's acceptable.

THE COURT: Okay. Attempting to arrest a person charged in an outstanding warrant is a duty of a law enforcement officer.

Defendant did not challenge the instruction at trial but specifically assented to the trial court's manner of instruction. The trial court explicitly provided defendant with the opportunity to comment about the instruction, which she failed to do, and to challenge its intended instruction, which she affirmatively stated was "acceptable." Therefore, the trial court did not have the opportunity to consider or rule on these issues defendant raises on appeal. Furthermore, any error made by the trial court in its instructions was invited by defendant, through her assent to the manner of instruction. *See Thompson*, 359 N.C. at 103, 604 S.E.2d at 869.

Moreover, in the body of her argument in her brief, defendant advanced no citation to any authority upon which she relied to support her position that the trial court committed plain error by providing this instruction under the facts that she alleged constitute evidence that bad faith warrants were served on defendant. N.C. R. App. P. 28(b)(6) ("The body of the argument . . . shall contain citations of the authorities upon which the appellant relies."). "It is not the role of the appellate courts . . . to create an appeal for an appellant." *State v. Bonetsky*, ___ N.C. App. ___, ___, 784 S.E.2d 637, 640 (quoting *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610

S.E.2d 360, 361 (2005)), *writ denied and disc. review denied*, 786 S.E.2d 917, *appeal dismissed as moot*, 787 S.E.2d 379 (2016). Therefore, we overrule defendant's challenge.

III. Conclusion

Defendant's constitutional challenge regarding her right to confront Officer Bonar at trial was not preserved for appellate review. The State presented substantial evidence that defendant's assault on Officer Bonar inflicted a "physical injury"; therefore, the trial court did not err in denying her motion to dismiss. Defendant has waived her right to challenge the trial court's jury instruction. Therefore, we conclude that defendant received a fair trial, free from error.

NO ERROR.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).