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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1029

Filed: 7 August 2018

Vance County, No. 14CRS53551

STATE OF NORTH CAROLINA

v.

GREGORY MCLEOD

Appeal by defendant from judgment entered 9 November 2016 by Judge Henry W. Hight Jr. in Vance County Superior Court. Heard in the Court of Appeals 7 June 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Brian D. Rabinovitz, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Hannah H. Love, for defendant.

DIETZ, Judge.

A jury convicted Defendant Gregory McLeod of assault with a deadly weapon inflicting serious injury after McLeod repeatedly stabbed his wife with a knife. At trial, the court declined McLeod's request for a self-defense instruction.

On appeal, McLeod argues that he was entitled to a self-defense instruction because there was evidence from which the jury could infer that his wife attacked first by throwing boiling water at him, and that he reasonably believed she may pick up a knife, syringe, or the empty pot, and inflict further serious injury or death.

As explained below, we reject this argument. The trial court properly determined that these are not reasonable inferences based on the limited facts presented at trial. Even assuming that McLeod's wife threw boiling water at him before he stabbed her, the evidence did not support an inference that he faced any further threat of death or great bodily injury following that initial attack. Thus, McLeod was not entitled to a self-defense instruction and we find no error in the trial court's judgment.

Facts and Procedural History

In 2014, Defendant Gregory McLeod had a violent struggle with his wife Tonya in which McLeod repeatedly stabbed Tonya with a combat knife and Tonya threw boiling water on McLeod.

According to Tonya, she spent the day alone studying for an exam while McLeod was gone. The couple lived together with Tonya's elderly grandparents. After several failed attempts to reach her husband during the day, Tonya called McLeod that night and told him she wanted to end their marriage. She suspected him of drug use, which he later admitted to law enforcement.

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Sometime after midnight, Tonya began boiling water on the stove to make coffee. McLeod returned home and knocked on the bedroom window because he did not have a key to the house. When Tonya ignored him, McLeod grabbed a ladder and used it to climb up into their bedroom window. Tonya testified that she “was kind of afraid” that McLeod would harm her “because of stuff that had happened in the past.” Once inside, McLeod followed his wife into the kitchen where they began arguing.

Tonya testified that McLeod began “messaging” with a steak knife in the kitchen while they argued. He then set that knife down, went back to the bedroom, and retrieved what Tonya described as a World War II-era combat knife. Tonya said “Greg, what, you’re going to stab me now” and began screaming for her grandfather to come downstairs.

According to Tonya, McLeod then grabbed her by the head and repeatedly stabbed her with the knife. In response, Tonya grabbed the pot of boiling water off the stove and threw it at McLeod, who continued to stab her. When she exclaimed “Greg, you’re going to kill me,” McLeod stopped stabbing her. Tonya pleaded with him to call 911 but instead McLeod ripped the wall-mounted phone from the kitchen wall, leaving it non-functional, and fled the scene.

A neighbor heard Tonya’s screams, went to the house, and encountered a man leaving the home with “sweat or water just pouring out of his face.” The neighbor asked the man if everything was okay and the man responded that “we were just

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having some rough sex.” The man then got into his car and drove away. The neighbor went to the front door and saw Tonya approach the door and collapse. Tonya was bloody and the neighbor thought she was going to die. He called 911 and emergency responders arrived. Tonya suffered a severed artery, a collapsed lung, and spent four days in emergency care on a ventilator.

Officers investigating the scene found two bloody knives and a blood-spattered pot on the kitchen floor. They later found McLeod in a convenience store parking lot. McLeod was covered in blood and had severe burns on his arms and hands. McLeod told the officers at the time that he “didn’t mean to do it” and “indicat[ed] that it was a struggle.”

Early the next morning, Detective Kelley interviewed McLeod. At trial, Detective Kelley described what McLeod told him during the interrogation. McLeod explained that he and Tonya “were arguing about him coming home late, and she had – he said that she dashed some water toward him. He said that he has lost his temper in the past and he must have, again, lost his temper and stabbed his wife. He didn’t mean to hurt her, but he did.” McLeod did not testify at trial.

When law enforcement first interviewed Tonya, Detective Kelley asked her “if at any point in time water was involved.” Tonya replied that “she didn’t really recall any water.” But she later admitted that was untrue and that she lied because she was afraid she “was going to get in trouble” with Detective Kelley “because I had

threw the water on Greg.” Tonya maintained that she did so only after McLeod attacked her first.

The State indicted McLeod for assault with a deadly weapon with intent to kill inflicting serious injury and the case went to trial. At the charge conference, the trial court denied McLeod’s request for a self-defense instruction. The court explained that “all the evidence that we have . . . was, Number One, he didn’t inten[d] to assault his wife at all; Number Two, that the reason for the assault was that he was mad.”

On 9 November 2016, the jury found McLeod guilty of the lesser included offense of assault with a deadly weapon inflicting serious injury. The trial court sentenced him to 29 to 47 months in prison. McLeod timely appealed.

Analysis

McLeod’s sole argument on appeal is that the trial court erred in denying his request for a self-defense jury instruction. We review this issue *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009).

A defendant asserting the right of self-defense must show he had a reasonable belief that using force was actually or apparently necessary to save himself from death or great bodily harm. *State v. Marsh*, 293 N.C. 353, 354, 237 S.E.2d 745, 747 (1977). It is the jury’s duty to determine the reasonableness of this belief from the facts and circumstances as they appeared to the defendant at the time. *Id.* If evidence exists from which a jury could infer that the defendant acted in self-defense, then the

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defendant is entitled to a self-defense instruction. *Id.* When assessing whether to instruct on self-defense, courts view the facts in the light most favorable to the defendant. *State v. Moore*, 111 N.C. App. 649, 654, 432 S.E.2d 887, 889 (1993).

As explained below, we conclude that the trial court properly rejected the self-defense instruction on these facts because there was no evidence from which the jury could infer that McLeod reasonably believed stabbing Tonya was necessary to save himself from death or great bodily harm.

To be sure, as McLeod argues, there was evidence (albeit weak) from which the jury could conclude that Tonya attacked him first by throwing boiling water at him. But this alone is not enough to require a self-defense instruction. Self-defense cannot be justified by an attack that already took place—the defense requires evidence that the defendant acted to prevent *further* bodily harm or death. *Marsh*, 293 N.C. at 354, 237 S.E.2d at 747.

McLeod first speculates that, after throwing the boiling water at him, “[i]t is possible that Tonya armed herself with the steak knife” that officers found at the scene during their investigation. But there is no evidence that Tonya even had access to that knife, much less any plan to use it to attack McLeod. Tonya testified that while the two argued, McLeod picked up that steak knife and “messed” with it before putting it down and retrieving the combat knife that he used to stab her. Detective Kelley’s testimony of what McLeod told him during his interrogation—the only other

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evidence of what occurred in the kitchen—did not mention Tonya having access to any knives at all. Thus, there was no evidence from which a jury could infer that Tonya had access to that steak knife and was about to attack McLeod with it when he stabbed her instead.

Likewise, McLeod argues Tonya might have used an insulin syringe located somewhere in the kitchen, or the empty pot that once contained the boiling water, to attack McLeod. But again, evidence that a person had *access* to a dangerous weapon (and calling a syringe or empty pot a dangerous weapon in this context is a stretch) does not by itself justify a self-defense instruction. *See State v. Skipper*, 146 N.C. App. 532, 539, 553 S.E.2d 690, 694 (2001). The question is whether there was evidence from which the jury could infer that McLeod reasonably believed he had to stab Tonya with the combat knife to save himself from death or great bodily injury. *Marsh*, 293 N.C. at 354, 237 S.E.2d at 747. Thus, McLeod must point to evidence from which the jury could infer that, at the time he stabbed his wife, he reasonably believed she was about to inflict great bodily injury or death to him using the syringe or the empty pot in the kitchen.

There is no evidence in the record to permit that inference. To the contrary, the only evidence addressing this question, from both Tonya's testimony and the detective's testimony of what McLeod told him—indicates that Tonya was not actively threatening McLeod when he stabbed her. Tonya testified that she threw the boiling

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water in self-defense after McLeod began stabbing her. Detective Kelley testified that McLeod told him Tonya “dashed some water toward him” and that the next thing he remembered was “her being on the floor” after he stabbed her. None of this evidence permits an inference that McLeod reasonably believed Tonya was about to inflict further bodily injury or death. In light of the limited evidence presented at trial, the trial court did not err by declining to instruct on self-defense.

Conclusion

We find no error in the trial court’s judgment.

NO ERROR.

Judges TYSON and BERGER concur.

Report per Rule 30(e).