An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-1123

Filed: 19 November 2019

Mecklenburg County, Nos. 13 CRS 233771-73, 234059

STATE OF NORTH CAROLINA

v.

COLIN DEMON LATTA

Appeal by defendant from judgments entered 7 November 2017 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 4 June 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Alvin W. Keller, Jr., for the State.

Rudolf Widenhouse, by M. Gordon Widenhouse, Jr., for defendant-appellant.

ZACHARY, Judge.

Defendant Colin Demon Latta appeals from judgments entered upon jury verdicts finding him guilty of first-degree murder, assault with a deadly weapon, assault with a deadly weapon inflicting serious injury, and possession of a firearm by a felon. Defendant argues that the trial court erred in denying his request for a jury instruction on self-defense, admitting into evidence two firearms that were discovered

in the house where he was arrested, and overruling his objection to a portion of the State's closing arguments. After careful review, we conclude that Defendant received a trial free from prejudicial error.

Background

On 21 August 2013, Defendant opened fire on a group of individuals seated at a picnic table in front of the townhome next door to Defendant's house. On 3 September 2013, Defendant was indicted for the first-degree murder of Charles Jefferson, assault with a deadly weapon of Harold Hammonds, assault with a deadly weapon inflicting serious injury of Clifton Boyd, and possession of a firearm by a felon.

Among the group of individuals seated at the picnic table on 21 August 2013 were the townhome's owner, Danieka Charley, along with several of her friends and family members, including Jefferson, Hammonds, and Boyd. Each of these individuals witnessed the events, and several of them testified at trial. The substance of their testimony follows.

At around 4:00 p.m. on 21 August 2013, about an hour after the group gathered at the picnic table, Defendant pulled in to his yard on his moped. The property line dividing Defendant's property from the neighboring townhomes was marked by a short section of chain-link fence, which was open at the front and back ends. Jefferson saw Defendant arrive home and "flagged him down" in the hopes of purchasing a pack

of cigarettes from him. Jefferson and Defendant met at the chain-link fence and conversed. Defendant offered three cigarettes to Jefferson, who responded, "What am I gonna do with this?" Jefferson continued to insist on purchasing an entire pack, but Defendant declined. Defendant then went inside his home, and Jefferson returned to the picnic table empty-handed.

Jefferson explained to the group that he had "wanted a pack," but that Defendant would only agree to sell him three single cigarettes. He told them that Defendant was "trying to tell me he's been locked up" and "trying to give me his life story." By that point, Defendant had returned in order to bring in his dog. Defendant overheard Jefferson talking about him to the group and yelled over, "What you sayin'? What you say?" Jefferson responded, "I was just saying I didn't want to hear your business."

According to the witnesses at the picnic table, Defendant then went inside his home. Approximately one to two minutes later, Defendant reappeared with a revolver, walked toward the group, and began shooting. Defendant continued around the fence to the picnic table, shooting at Jefferson from approximately two feet away. While the others ran for safety, Boyd attempted to intervene by approaching Defendant and exclaiming, "Hold on, that's my cousin." Defendant then turned, pointed his gun at Boyd, and shot him. Boyd sustained serious injuries, and Jefferson

was rushed to the hospital, where he later died. Defendant's bullets also struck Hammonds, causing him minor injuries.

Defendant's testimony was similar to the account of events related by the others, although he described Jefferson as being much more agitated, and added that Jefferson had traveled around the fence and was on Defendant's property during an earlier portion of their conversation. Defendant also testified that Jefferson had "charged" toward the fence at him when he inquired about Jefferson's remarks to the group at the picnic table. He explained that Jefferson's "aggression" in charging the fence led Defendant to retrieve his firearm from the house and begin shooting. However, none of the other witnesses testified that Jefferson had behaved in a threatening manner.

During the charge conference, Defendant requested that the trial court instruct the jury on self-defense, but the trial court declined to do so. The jury found Defendant guilty of (1) first-degree murder of Jefferson under the felony murder rule, with the underlying felony being assault with a deadly weapon inflicting serious injury; (2) assault with a deadly weapon of Hammonds; (3) assault with a deadly weapon inflicting serious injury of Boyd; and (4) possession of a firearm by a felon. The trial court entered judgment sentencing Defendant to life without the possibility of parole, to be served in the custody of the North Carolina Division of Adult Correction. Defendant gave oral notice of appeal in open court.

Discussion

On appeal, Defendant argues that the trial court erred in (1) refusing to instruct the jury on self-defense, (2) admitting certain items into evidence, and (3) overruling his objection during closing arguments to the prosecutor's statements concerning reasonable doubt.

I. Self-Defense

Defendant first argues that the trial court erred in denying his request for a self-defense instruction. We disagree.

"Assignments of error 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).

In considering a request for a jury instruction on self-defense, the trial court must view the evidence "in the light most favorable to the defendant." *State v. Moore*, 363 N.C. 793, 796, 688 S.E.2d 447, 449 (2010) (citations omitted). "[I]f the defendant's evidence, taken as true, is sufficient to support an instruction for self-defense, it must be given even though the State's evidence is contradictory." *Id.* "Where competent evidence of self-defense is presented at trial, the defendant is entitled to an instruction on this defense, as it is a substantial and essential feature of the case." *State v. Lee*, 370 N.C. 671, 674, 811 S.E.2d 563, 566 (2018).

The law of self-defense is codified in part at N.C. Gen. Stat. § 14-51.3, which provides, *inter alia*:

> a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if . . . [h]e or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

N.C. Gen. Stat. § 14-51.3(a)(1) (2017).

Under this statute, “wherever an individual is lawfully located—whether it is his home, motor vehicle, workplace, or any other place where he has the lawful right to be—the individual may stand his ground and defend himself from attack,” so long as he “reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another.” *State v. Bass*, 371 N.C. 535, 541, 819 S.E.2d 322, 326 (2018). “If, however, there is no evidence from which the jury reasonably could find that the defendant in fact believed that it was necessary to kill his adversary to protect himself from death or great bodily harm, the defendant is not entitled to have the jury instructed on self-defense.” *State v. Bush*, 307 N.C. 152, 160, 297 S.E.2d 563, 569 (1982).

In the instant case, Defendant’s request for a self-defense instruction was premised upon his contradicted testimony. According to Defendant, the altercation began when he returned outside to bring in his dog and overheard Jefferson talking about him to the group. Defendant testified that after he yelled, “What’s up?”,

[DEFENDANT:] . . . . Mr. Jefferson, he spun around, started charging towards the fence. "Mother f*****g n****r, what's up?" . . . Hands all belligerent and everything. When he got to the fence he reached as if he had something.

. . . .

[DEFENSE COUNSEL:] How did that make you feel?

A. Oh, made me feel fearful. Threatened. Cause I been stabbed. Been shot at.

Q. Now what did you do?

A. What I do? I went in the house and I got my gun.

Q. Why did you do that?

A. Because my life was in danger. There wasn't no thinking. It wasn't none of that. I been around long enough and I been through a lot of situations, whether it was self-inflicted or not, to know how people carry on. And know when people are threatening you and when they will do something to you. And at this time I knew this man would do something to me.

Because I never disrespected this man. Never said nothing out of the way. Never met him before. And it was uncalled for, you know, for this man to carry on like that.

. . . .

Q. Now, so you went in your house and you got, got the gun; is that right?

A. Right.

Q. What did you do next?

> A. I came out. And I made sure nobody else was around. And I spotted him. He was standing by hisself. And I shot at him.

Defendant testified on cross-examination that Jefferson's conduct in "charging" the fence seemed "aggressive" to him, explaining that "what made it aggressive was what was coming out of [Jefferson's] mouth. What also made it aggressive was my statements to this man. This man, it was unwarranted for him to even conduct himself like that. That's why I say 'charging.' " Defendant also acknowledged that Jefferson "never had a gun in his hands the entire time [Defendant was] shooting[.]"

Based on the evidence presented, we conclude that the jury could not have reasonably found that Defendant in fact formed a reasonable belief that it was necessary to use deadly force against Jefferson in order to save himself from imminent death or great bodily harm. Even when viewed in the light most favorable to Defendant, the evidence merely established that Jefferson "charged" toward the fence separating the two properties and began yelling at Defendant in an aggressive manner. Defendant then went inside his home to retrieve his firearm, and Jefferson returned to his seat at the picnic table. After approximately one to two minutes, Defendant returned outside and pursued Jefferson, shooting in his direction. This break in the chain of events negates any possibility that Defendant reasonably believed that it was necessary to use deadly force in order to prevent imminent death

or great bodily harm to himself. *See State v. Norman*, 324 N.C. 253, 261, 378 S.E.2d 8, 13 (1989) ("The imminence requirement ensures that deadly force will be used only where it is necessary as a last resort in the exercise of the inherent right of self-preservation. . . . Our cases have sometimes used the phrase 'about to suffer' interchangeably with 'imminent' to describe the *immediacy of threat* that is required to justify killing in self-defense." (emphasis added) (citations omitted)); *see also State v. Lyons*, 340 N.C. 646, 662, 459 S.E.2d 770, 779 (1995) (holding that the defendant's "self-serving statement that he was 'scared' [was] not evidence that [the] defendant formed a belief that it was necessary to kill in order to save himself").

Nor is there merit to Defendant's contention that he was entitled to a statutory presumption that he held a reasonable fear of imminent death or serious bodily harm, pursuant to N.C. Gen. Stat. § 14-51.2, which provides, in pertinent part:

> (b) The lawful occupant of a home, [including its curtilage,] . . . is presumed to have held a reasonable fear of imminent death or serious bodily harm . . . when using defensive force . . . if both of the following apply:
>
> > (1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, [including its curtilage] . . . .
> >
> > (2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

N.C. Gen. Stat. § 14-51.2(b)(1)-(2) (2017).

In the instant case, Defendant was not entitled to the statutory presumption of the castle doctrine defense, or defense of habitation, because he was not a lawful occupant of the home where the shooting occurred. By his own admission, Defendant was fully within the borders of Danieka Charley's property when he opened fire on his neighbor and her guests. Thus, Defendant was a trespasser, not a lawful occupant, and was not entitled to the statutory presumption of reasonable fear of imminent death or serious bodily harm codified under N.C. Gen. Stat. § 14-51.2(b).

Accordingly, because there was no evidence from which the jury could reasonably find that Defendant had formed a reasonable belief that it was necessary to use deadly force against Jefferson in order to prevent imminent death or great bodily harm to himself, and because Defendant was not entitled to the statutory presumption set forth under N.C. Gen. Stat. § 14-51.2(b), the trial court properly declined Defendant's request for a jury instruction on self-defense.

II. Firearms Evidence

Defendant next argues that the trial court erred by admitting into evidence—over Defendant's objections—two firearms that law enforcement officers discovered in the guesthouse where Defendant hid after the shooting. We disagree.

After the shooting, Defendant fled to South Carolina. Defendant's friend, Frank Thompson, lived in South Carolina and let Defendant stay in his guesthouse. Defendant and Thompson talked and watched television in Thompson's guesthouse

for several hours before Thompson left to sleep in the main house. Several hours later, a SWAT team of approximately fifty law enforcement officers arrived and surrounded the premises. The law enforcement officers arrested Defendant, and located an assault rifle and a .38 caliber handgun hidden underneath the couch cushions in the guesthouse. Defendant insisted that neither the assault rifle nor the handgun were his, and that he did not know the firearms were under the couch cushions. Neither of the firearms matched the weapon that Defendant used in the shooting.

Defendant objected to the admission of the two firearms, which the trial court overruled. The trial court instructed the jury regarding the firearms as follows:

> [E]vidence has been introduced that the State contends . . . shows the defendant was in an outdoor structure on someone else's property, and that two firearms were located in that structure.
>
> The State does not contend that these firearms were used during the events [in question]. And you cannot . . . consider these firearms as evidence of the defendant's intent to kill, malice, proximate cause, premeditation, or deliberation. You may only consider the firearms as possible evidence of flight. It is for you, the jury, to determine whether evidence of firearms in the outdoor structure where the defendant was arrested is evidence of flight or not.

Defendant argues that the trial court erred by admitting the firearms to show flight because they did not constitute relevant evidence, in that they "were not connected to any of the charge[d] crimes." However, we find no reversible error.

Even where a defendant has successfully shown that the trial court erred in admitting certain evidence, such error will not entitle the defendant to a new trial unless he can show that he was prejudiced as a result. *State v. Herring*, 322 N.C. 733, 749, 370 S.E.2d 363, 373 (1988). In order to meet that burden, the defendant must show 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[.]" N.C. Gen. Stat. § 15A-1443(a) (2017).

In the instant case, even assuming, *arguendo*, that the trial court improperly admitted the firearms into evidence and instructed the jury on its consideration of the same, Defendant cannot establish that the error was so prejudicial as to warrant a new trial. Overwhelming evidence supporting Defendant's guilt of each of the charged offenses was presented, including the testimony of several eyewitnesses, as well as Defendant's own testimony. In light of the substantial evidence against him, Defendant cannot establish that there was a reasonable possibility that the jury would have acquitted him had the trial court not admitted into evidence the two firearms found in the guesthouse.

Accordingly, Defendant has failed to meet his burden of showing prejudicial error and is not entitled to a new trial on these grounds.

III. Closing Arguments

Lastly, Defendant argues that the trial court abused its discretion when it overruled Defendant's objection "to the prosecutor's grossly improper closing argument that misstated the concept of proof beyond a reasonable doubt." We disagree.

Defendant takes particular issue with the prosecutor's closing arguments concerning reasonable doubt, specifically, the prosecutor's statement that "It's not five ways to find someone not guilty and only one way to convict somebody." Defendant contends that "[t]his statement was incorrect. There can be any number of reasons for which the [S]tate's evidence may fail to prove guilty beyond a reasonable doubt." This is true.

Nevertheless, although the trial court did not "instruct[ ] the jury that the State's argument was improper," *State v. Ratliff*, 341 N.C. 610, 616, 461 S.E.2d 325, 328 (1995), it did ultimately instruct the jury as follows:

> A reasonable doubt is a doubt based on reason and common sense, fairly arising out of some or all of the evidence that has been presented, or the lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.

In that the trial court correctly instructed the jury on reasonable doubt following the State's closing arguments, the error alleged by Defendant was not so prejudicial as to warrant a new trial. *See State v. Phillips*, 365 N.C. 103, 140, 711 S.E.2d 122, 148 (2011) ("Any impropriety in the argument was cured by the court's

correct jury instructions . . . ."), *cert. denied*, 565 U.S. 1204, 182 L. Ed. 2d 176 (2012); *accord State v. Anderson*, 322 N.C. 22, 38, 366 S.E.2d 459, 469, *cert. denied*, 488 U.S. 975, 102 L. Ed. 2d 548 (1988). Accordingly, Defendant is not entitled to a new trial on this ground.

Conclusion

The trial court did not err in refusing to instruct the jury on self-defense. We further conclude that Defendant has failed to establish that he was prejudiced by the trial court's admission of the two firearms, or the prosecutor's statements concerning reasonable doubt during closing arguments.

NO ERROR.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).