IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1294

Filed: 17 December 2019

Guilford County, No. 15 CRS 34345

STATE OF NORTH CAROLINA

v.

BULENT BEDIZ

Appeal by Defendant from judgment entered 13 June 2018 by Judge Stanley L. Allen in Guilford County Superior Court. Heard in the Court of Appeals 23 May 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General A. Mercedes Restucha-Klem, for the State-Appellee.

Yoder Law PLLC, by Jason Christopher Yoder, for Defendant-Appellant.

COLLINS, Judge.

Defendant Bulent Bediz appeals from judgment entered upon a jury verdict of guilty of misdemeanor simple assault. Defendant argues that the trial court (1) erred in denying his motion to dismiss because there was insufficient evidence that Defendant intentionally touched Mr. Mark Wayman with the passenger side-view mirror while parking his car, and (2) erred in denying his request for a jury instruction on the defense of accident because Defendant presented substantial evidence that he was parking and did not intend to touch Wayman with the passenger

side-view mirror of his car. We affirm in part and reverse in part, ordering a new trial.

I. Procedural History

On 3 December 2015, Defendant was arrested and charged with misdemeanor assault with a deadly weapon pursuant to N.C. Gen. Stat. § 14-33(c)(1) (2015). On 15 November 2016, at a bench trial in district court, Defendant was found guilty as charged. Defendant appealed to superior court. On 29 May 2018, Defendant's case came on for a jury trial de novo.

At the close of the State's evidence, and again at the close of all the evidence, Defendant moved to dismiss for insufficient evidence; the trial court denied both motions. At the jury charge conference, Defendant's request for a jury instruction on the lesser-included offense of misdemeanor simple assault was granted; his request for an instruction on the defense of accident under N.C.P.I.–Crim. 307.11 was denied.

The jury acquitted Defendant of assault with a deadly weapon, but found Defendant guilty of misdemeanor simple assault. The trial court entered judgment upon the jury's verdict, sentencing Defendant to 45 days' imprisonment, suspending the sentence, and placing Defendant on 12 months' unsupervised probation. On 5 June 2018, Defendant gave proper written notice of appeal to this Court.

II. Factual Background

The evidence at trial tended to show the following: Defendant owned a rental property at 808 Haywood Street in the city of Greensboro (the "Property"). The city had notified Defendant that salvaged building materials on the Property were a nuisance and needed to be removed. Defendant hired workers to clean up the property and believed that he had complied with the notice. At approximately 8:30 a.m. on 3 December 2015, Defendant was working at the Property when he saw a Greensboro city contractor sifting through the remaining salvaged materials. Defendant told the contractor to leave, and the contractor complied.

Later that morning, Code Enforcement Supervisor Mark Wayman, who had previously interacted with Defendant, sought and executed an administrative warrant to remove the salvaged materials from the Property. Wayman requested the assistance of law enforcement in executing the warrant. Officers Watson and Wilson of the Greensboro Police Department accompanied Wayman to the scene.

Upon arriving at the Property, the officers activated their respective body cameras; both body cameras captured footage of the subsequent events. At approximately 10:00 a.m., while Wayman, Watson, Wilson, and another city inspector were standing in the street in front of the Property, Defendant drove up in his car. As Defendant drove by the three men, Defendant's passenger side-view mirror struck Wayman in the hip. Both officers shouted at Defendant to stop and instructed him to get out of the car. Defendant stopped in the middle of the road and rolled down his

window to listen to Watson. Defendant then looked away from Watson and toward the front windshield. As this happened, Wayman walked in front of Defendant's car to join the officer on the opposite side of the street. Defendant's car moved forward, striking Wayman in the knee.

Defendant yelled at Wayman from inside his car while the officers repeatedly demanded that Defendant get out of his car. Defendant got out his car, walked toward Wayman pointing his finger, and stated that Wayman "wanted to be hit." Watson took Defendant's keys and immediately called for backup. Defendant was arrested and charged via Uniform Citation with one count of misdemeanor assault with a deadly weapon as follows: "Did assault Mark Wayman with a deadly weapon (vehicle) to wit Mr. Wayman received injury to his right hip, left knee & lower leg. G.S. 14-33(c)(1)[.]"

III. Discussion

1. Motion to Dismiss

Defendant first argues that the trial court erred in denying his motion to dismiss, because the State did not present sufficient evidence that Defendant intentionally touched Wayman with the passenger side-view mirror while parking his car. We disagree.

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

When a defendant moves to dismiss for insufficient evidence, the trial court must determine "whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Worley*, 198 N.C. App. 329, 333, 679 S.E.2d 857, 861 (2009) (quotation marks and citations omitted). "[T]he trial court must consider the record evidence in the light most favorable to the State . . . ." *Id.*

The criminal offense of assault is generally defined as an overt act or attempt, with force and violence, to do immediate physical injury to the body of another or to put a person of reasonable firmness in fear of immediate bodily harm. *State v. Roberts*, 270 N.C. 655, 658, 155 S.E.2d 303, 305 (1967). An assault requires "the intent to cause apprehension of an imminent offensive or harmful contact . . . ." *Britt v. Hayes*, 142 N.C. App. 190, 192, 541 S.E.2d 761, 762 (2001) (citing *Ormond v. Crampton*, 16 N.C. App. 88, 94, 191 S.E.2d 405, 409–10 (1972)). "A defendant's intent is seldom provable by direct evidence and must usually be proved through circumstantial evidence." *State v. Liggons*, 194 N.C. App. 734, 739, 670 S.E.2d 333, 338 (2009) (citation omitted). "[T]he nature of the assault, the manner in which it was made, the weapon, if any, used, and the surrounding circumstances are all matters from which [] intent . . . may be inferred." *State v. White*, 307 N.C. 42, 49, 296 S.E.2d 267, 271 (1982). "The surrounding circumstances include the foreseeable

consequences of a defendant's deliberate actions as a defendant must be held to intend the normal and natural results of his deliberate act." *Liggons*, 194 N.C. App. at 739, 670 S.E.2d at 338 (quotation marks and citation omitted).

Wayman testified that he was standing in the street with Watson when Defendant "swerved towards" them and hit Wayman with the passenger side-view mirror of his car, even though there was "ample room for [Defendant] to maneuver around" them. Wayman also testified that after exiting the car, Defendant was visibly upset and "[i]mmediately came towards me pointing his finger at me."

Watson testified that he watched Defendant hit Wayman with the passenger side-view mirror of his car. He also testified that after the hit, both officers directed Defendant to exit the car, but Defendant "did not get out of the car when I asked him to do that" and Defendant "was not listening." After Defendant exited the car, he "began to go towards Mr. Wayman" and was upset. Video from Watson's body camera shows Defendant getting out of the car and walking toward Wayman while pointing his finger at him.

The testimony and video footage show that Defendant drove toward Wayman, hit him with the passenger side-view mirror of the car, exited the vehicle, and walked toward Wayman while visibly upset. These circumstances could allow a reasonable person to believe that Defendant intended to hit Wayman, or at least intended to put Wayman in fear of immediate bodily harm. *Roberts*, 270 N.C. at 658, 155 S.E.2d at

305. Additionally, Defendant's act of driving within inches of where Wayman stood in the road, in an attempt to "squeeze around" Wayman to park his car, could foreseeably lead to Defendant's car hitting Wayman. As the trial court was permitted to consider these "foreseeable consequences" of Defendant's actions as evidence of Defendant's intent, the State provided substantial evidence of each element of assault. *Liggons*, 194 N.C. App. at 739, 670 S.E.2d at 338. Thus, the trial court did not err by denying Defendant's motion to dismiss.

2. Jury Instruction

Defendant next argues that the trial court committed reversible error in denying his request for a jury instruction on the defense of accident. We agree.

Whether sufficient evidence exists to warrant a jury instruction is a question of law, reviewed de novo on appeal. *State v. Smith*, 832 S.E.2d 678, 684 (N.C. Ct. App. 2019).

"The trial court has a duty to instruct the jury on all substantial features of the case arising on the evidence." *State v. Garrett*, 93 N.C. App. 79, 82, 376 S.E.2d 465, 467 (1989) (citation omitted). "All defenses arising from the evidence presented during trial, including the defense of accident, are substantial features of a case and therefore warrant instructions." *Id.* (citation omitted).

> For a jury instruction to be required on a particular defense, there must be substantial evidence of each element of the defense when the evidence is viewed in the light most favorable to the defendant. Substantial evidence

> is evidence that a reasonable person would find sufficient to support a conclusion. Whether the evidence presented constitutes substantial evidence is a question of law.

State v. Bice, 821 S.E.2d 259, 266-67 (N.C. Ct. App. 2018) (quotation marks, brackets, and citations omitted).

Thus, in this case, the trial court was required to instruct the jury regarding the defense of accident if substantial evidence had been introduced showing that Defendant struck Wayman (1) "unintentional[ly]," (2) "during the course of lawful conduct," and (3) in a manner that did "not involve culpable negligence." N.C.P.I.—Crim. 307.11. "Culpable negligence is such recklessness or carelessness . . . as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others." *State v. Cope*, 204 N.C. 28, 167 S.E. 456, 458 (1933).

Defendant testified,

> [A]s best as I can remember, my sole intent was to park the car and talk to the police and tell them what was going on because I felt like I was the victim and I wanted to talk to the police.
>
> . . . .
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> I'm coming down Haywood Street and I'm just trying to park in front of 808 Haywood Street to talk to the police. And Mark Wayman was standing there in the middle of the street. There was another police officer. I squeezed by them. And just then the police stopped me. And I didn't even realize I had hit him like he alleges.

When asked whether he could see Wayman walk around the front of the vehicle, Defendant testified that he could not. He explained,

> Well, I understood from [the officer] to go and park my car by the curb. That's what I was intending to do because in the video it's very evident that the car is in direction to go and park by the curbside. So I was just continuing to park my car there so that I can talk to the police. So I lifted my foot off the brake. And then, as you see in the video, the police then afterwards tell me to get out of the car, etcetera.

On cross-examination, Defendant testified, "I was driving my car to park it by the curbside. I was not driving my car to hit Mr. Wayman." Defendant explained that everything happened very fast, it was a "chaotic and confusing situation," and that he asked Wilson "I hit him?" afterwards because he did not realize that he had hit Wayman.

This evidence was sufficient evidence from which a jury could find that Defendant hit Wayman accidentally–that is, unintentionally, while acting lawfully, and not acting with thoughtless disregard of consequences or a heedless indifference to the safety and rights of others. *Cope*, 204 N.C. at 28, 167 S.E. at 458. Accordingly, the trial court erred in not instructing the jury on the defense of accident. As a result, Defendant is entitled to a new trial.

IV. Conclusion

The trial court did not err by denying Defendant's motion to dismiss for insufficient evidence. The trial court did err by refusing to instruct the jury on the defense of accident. We reverse and remand for a new trial.

NEW TRIAL.

Judges DIETZ and MURPHY concur.