IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-776

Filed: 6 August 2019

Guilford County, Nos. 16CRS070187, 17CRS024154

STATE OF NORTH CAROLINA

v.

DEJUAN ANTONIO YOURSE, Defendant.

Appeal by defendant from judgment entered 13 December 2017 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 28 March 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Narcisa Woods, for the State.

Ward, Smith & Norris, P.A. by Kirby H. Smith III, for defendant-appellant.

BERGER, Judge.

Dejuan Antonio Yourse ("Defendant") was convicted of assault on a female, habitual misdemeanor assault, and having attained habitual felon status. He was sentenced to 103 to 136 months in prison. Defendant appeals arguing the trial court did not have subject matter jurisdiction on the habitual misdemeanor assault charge,

and the trial court erred when it declined to instruct the jury on self-defense. We disagree.

Factual and Procedural Background

On March 4, 2016, Fox's Pizza delivered a pizza to Latisha Gadsen ("Gadsen") that she claimed was cold. Gadsen called the manager of the restaurant to complain, and the manager informed her that he would make another pizza for her. Gadsen then received a call from Defendant, who offered to return the pizza for her. Defendant took the pizza to the restaurant and told Saad Arafa ("Arafa"), the manager, it was cold. An argument then took place between Defendant and Arafa. Defendant also had a verbal altercation with a cook.

Seventeen year-old Savannah Skeens ("Skeens") entered the restaurant around 9 p.m. Skeens was an employee, and Arafa informed her that Defendant was upset. Arafa left Skeens at the counter and went back to the kitchen. When Defendant continued yelling at Arafa, Skeens asked Defendant to leave.

When Defendant attempted to walk toward the kitchen, Skeens moved from the counter and into his path. Defendant initiated physical contact with Skeens, and she informed Defendant he could not go to the back. Defendant is approximately "6 foot to 6'4" around 250 pounds," while Skeens is 5'1" and 150 pounds. Skeens felt threatened as Defendant was "almost on top of her." Skeens pushed Defendant in an attempt to get him to back off.

Skeens testified that she "slipped, and [Defendant] grabbed me and pulled me down." While on the floor, Defendant pulled Skeens's hair and dragged her across the floor by her hair. Defendant also hit Skeens repeatedly, held her down on a table, grabbed her by the neck, and choked her. At trial, the State entered photos into evidence which showed bruising on Skeen's neck. Defendant did not object to the photos being introduced into evidence.

Arafa and the cook came from behind the kitchen counter. The cook had a knife and Arafa threw a chair at Defendant. Defendant then used the chair to strike Skeens. Skeens and Arafa attempted to force Defendant out of the restaurant, and Defendant punched Skeens in the face as he left. Skeens was able to obtain Defendant's license plate number as he left the restaurant.

On April 3, 2017, Defendant was indicted for assault on a female, habitual misdemeanor assault, and having attained habitual felon status. On December 13, 2017, Defendant was found guilty of assault. Defendant admitted he had two prior assault convictions, and he was convicted of habitual misdemeanor assault. Defendant also admitted to having attained habitual felon status, and he was sentenced to 103 to 136 months in prison. Defendant appeals.

Analysis

I. Subject Matter Jurisdiction

Defendant first argues that the trial court did not have subject matter jurisdiction on the charge of habitual misdemeanor assault. Specifically, Defendant contends that the indictment for habitual misdemeanor assault failed to allege two separate predicate assault convictions because the two prior assault convictions used in the indictment occurred on the same day. We disagree.

Our appellate courts conduct a *de novo* review for challenges to the sufficiency of an indictment. *State v. Pendergraft*, 238 N.C. App. 516, 521, 767 S.E.2d 674, 679 (2014).

> A person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of G.S. 14-33 and causes physical injury, or G.S. 14-34, and has two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions occurring no more than 15 years prior to the date of the current violation.

N.C. Gen. Stat. § 14-33.2 (2017).

The indictment for habitual misdemeanor assault returned by the Grand Jury read as follows:

> The jurors for the State upon their oath present that on or about the date of offense shown above and in Guilford County, the defendant, Dejuan Antonio Yourse, unlawfully, willfully and feloniously did commit the offense of Habitual Misdemeanor Assault, in that he violated the provision of G.S. 14-33(c)(2) as set forth in count one of this indictment after having been convicted of two or more prior assault offenses, to wit:
>
> 1. On or about December 11, 2007 the defendant was convicted of Assault on a Female in the District Court

> of Guilford County, said offense being committed on or about March 13, 2007. (07 CR 82229)
>
> 2. On or about December 11, 2007, the defendant was convicted of Assault on a Female in the District Court of Guilford County, said offense being committed on or about May 09, 2007. (07 CR 87876)
>
> The earlier of these convictions occurred no more than 15 years prior to the date of current violation.

Defendant contends that he could not be prosecuted because he had been convicted of both predicate offenses on December 11, 2007. Defendant points to language in other habitual offender statutes to justify his argument. He contends that because there can be no overlap in convictions and offenses, for example, in our habitual felon statute or our violent habitual felon statute, the legislature intended for all habitual offender statutes to contain such a requirement. *See* N.C. Gen. Stat. § 14-7.1 (2017). We note that "[w]here the words of a statute are clear and unambiguous, the words will be given their plain and definite meaning." *State v. Roache,* 358 N.C. 243, 273, 595 S.E.2d 381, 402 (2004) (citation omitted). Defendant concedes that the habitual misdemeanor assault statute does not define what constitutes a prior conviction.

Defendant's argument on this issue ignores the plain language of N.C. Gen. Stat. § 14-33.2. The indictment specifically alleged that Defendant had violated N.C. Gen. Stat. § 14-33 and caused physical injury. The indictment also specifically alleged that Defendant had been convicted on December 11, 2007 of two prior

assaults: the first was a March 13, 2007 assault on a female, Guilford County file number 07 CR 82229; and the second was also an assault on a female committed on May 9, 2007, Guilford County file number 07 CR 87876. Neither of these offenses occurred more than fifteen years prior to the assault allegedly committed on Skeens. Thus, the allegations in the indictment for habitual misdemeanor assault comply with the plain language of Section 14-33.2.

In addition, this Court has held that Section 14-33.2 has "no language which could be reasonably construed as requiring that any of the prior misdemeanor convictions either occur on separate dates or arise from separate incidents." *State v. Forrest*, 168 N.C. App. 614, 623, 609 S.E.2d 241, 247 (2005). Further, this Court in *Forrest* was

> not persuaded by defendant's argument that because our Legislature has expressly provided that an offender must be convicted of three *felonies* committed on separate occasions in order to obtain habitual *felon* status, see N.C. Gen. Stat. § 14-7.1 (2003), this same "separate occurrences" requirement should be read into the habitual misdemeanor assault statute. To the contrary, from the very fact that the legislature chose to specify that the three felony convictions underlying a habitual felon charge must arise from separate occurrences, we may infer that the legislature would have included a similar specification in N.C. Gen. Stat. § 14-33.2 if it had intended to impose a "separate occurrences" limitation on the offense of habitual misdemeanor assault.

Id. at 623-24, 609 S.E.2d at 247.

Therefore, because the indictment complied with Section 14-33.2, the trial court had subject matter jurisdiction for Defendant's habitual misdemeanor assault charge.

II. Self-Defense Instruction

Defendant next asserts that the trial court erred by not instructing the jury on the issue of self-defense as he had requested. We disagree.

"Whether evidence is sufficient to warrant an instruction on self-defense is a question of law; therefore, the applicable standard of review is *de novo*." *State v. Mills*, ___ N.C. App. ___, ___, 788 S.E.2d 640, 642 (2016) (citations omitted). "Under a *de novo* review, th[is C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-633, 699 S.E.2d 204, 209 (2008) (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. Hudgins*, 167 N.C. App. 705, 709, 606 S.E.2d 443, 446 (2005) (*purgandum*). "In determining whether an instruction on perfect self-defense must be given, the evidence is to be viewed in the light most favorable to the defendant." *State v. Moore,*

363 N.C. 793, 796, 688 S.E.2d 447, 449 (2010) (citation omitted). "A defendant does not have to testify or offer evidence in order for the jury to be instructed on the law of self-defense." *State v. Alston*, 161 N.C. App. 367, 372, 588 S.E.2d 530, 535 (2003).

However, "a person is entitled under the law of self-defense to harm another only if he is without fault in provoking, engaging in, or continuing a difficulty with another." *State v. Effler*, 207 N.C. App. 91, 98, 698 S.E.2d 547, 552 (2010) (*purgandum*).

Here, Defendant initiated physical contact with Skeens when he attempted to go into the kitchen. He continued yelling at Arafa and then began assaulting Skeens. In addition, Defendant was asked to leave the restaurant. When he failed to leave the restaurant as requested, he became a trespasser, and had no lawful right to be anywhere on the premises. *See* N.C. Gen. Stat. § 14-159.12 (2017).

Thus, even when viewing the evidence in the light most favorable to Defendant, he was not entitled to a self-defense instruction because he was at fault in provoking and continuing an encounter where he had no lawful right to be. We therefore find no error.

Conclusion

The trial court had subject matter jurisdiction on the charge of habitual misdemeanor assault. The trial court did not err in not instructing the jury on self-defense. Defendant received a fair trial, free from error.

NO ERROR.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).