IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1109

Filed: 3 November 2020

Haywood County, No. 17 CRS 963

STATE OF NORTH CAROLINA

v.

JOHN LUKE LECKNER

Appeal by Defendant from Judgment entered 29 March 2019 by Judge Tanya T. Wallace in Haywood County Superior Court. Heard in the Court of Appeals 8 September 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel P. Mosteller, for the State.

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

HAMPSON, Judge.

Factual and Procedural Background

John Luke Leckner (Defendant) appeals from a Judgment entered 29 March 2019 upon a jury verdict finding him guilty of Assault Inflicting Physical Injury on a Law Enforcement Officer. The Record before us, including evidence presented at trial, tends to show the following:

On 18 June 2017, Defendant and his wife were at their house in Haywood County, North Carolina. An altercation occurred between Defendant, his wife, and their neighbors. As a result, Defendant's neighbor Patsy Lokerson called 911. Officer Ryan Flowers of both the Haywood County Sheriff's Office and the Maggie Valley Police Department responded to Defendant's house after dispatch reported multiple calls about a male screaming at a female. Officer Flowers testified he found Defendant in the "driveway area" of his front yard and testified Defendant was screaming in the general direction of the neighbors. When Officer Flowers asked Defendant what was going on, Defendant redirected his yelling at Officer Flowers. Officer Flowers again asked Defendant to explain the situation; however, Defendant did not respond to Officer Flowers and instead turned and ran into his house. Officer Flowers followed Defendant on to his porch and tried to enter Defendant's house. As Officer Flowers reached the front door, Defendant shut the door on Officer Flowers's left arm and leg. Officer Flowers testified he only moved out of the doorway upon hearing Defendant say, "F**K you, I'm going to get my gun."

Officer Flowers returned to his patrol car where he called for backup. Four to five additional patrol cars arrived and set up a perimeter around Defendant's house. Defendant's wife approached the officers and diffused the situation. A warrant was issued for Defendant's arrest later the same day on charges of Misdemeanor Resisting a Public Officer, Assault on a Public Officer, and Interference with Emergency

Communication. The charges were dismissed, and on 27 November 2017, Defendant was indicted on charges of Felony Assault Inflicting Physical Injury on a Law Enforcement Officer and Misdemeanor Resisting a Public Officer.

Defendant's case came on for trial on 25 March 2019, and Defendant testified in his defense. Defendant refuted Officer Flowers's recollection of their interaction. Defense counsel questioned Defendant: "[Officer Flowers] said you were banging repeatedly, slamming the door against his arm and leg. Is that what happened?" And Defendant responded, "No." Instead, when asked if Defendant "slam[med] the door on [Officer] Flowers at all?" Defendant testified, "[He was] in the doorway that leads to the kitchen." Again, defense counsel asked: "[D]id you ever slam [Officer Flowers's] leg, arm, any part of his body in your front door?" And again, Defendant replied, "No." Defendant further testified he was only aware of Officer Flowers's actual presence on his property when "[Officer Flowers] smashed our [door] frame."

At the close of the evidence the State voluntarily dismissed the charge of Misdemeanor Resisting a Public Officer. During the charge conference, Defendant requested the trial court instruct the jury on the affirmative defenses of self-defense and defense of habitation, which the trial court denied. The trial court instructed the jury on the charge of Assault on a Law Enforcement Officer Inflicting Physical Injury, and the jury returned a guilty verdict. The trial court determined Defendant had a prior record level of I and sentenced Defendant in open court to 8 to 19 months active

sentence to be suspended for 18 months pursuant to supervised probation. The trial court also imposed special conditions of probation. Defendant entered oral notice of appeal prior to the conclusion of his sentencing.

Later the same day in the same session of superior court, the trial court indicated to Defendant's trial counsel it "made an error on [Defendant's] judgment[.]" Noting it would be "to [Defendant's] benefit to change it," the trial court sentenced Defendant to "6 months minimum, 17 months maximum, still suspended under all those same terms and circumstances." The written Judgment included in the Record on Form AOC-CR-603D, and from which Defendant appeals, reflects the corrected sentence.

Issues

There are two issues on appeal before this Court: (I) whether the trial court erred in declining to instruct the jury as to Defendant's requested defense of self-defense and on the right to resist an unlawful arrest and the right to defend against an arrest made with excessive force and (II) whether the trial court denied Defendant the opportunity to be heard when it amended Defendant's sentence in his absence.

Analysis

I. Jury Instructions

On appeal, Defendant contends the trial court erred in its denial of his requested self-defense instruction and plainly erred by not instructing the jury

Defendant had the right to defend against an unlawful arrest and against an arrest made with excessive force. "It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence." *State v. Shaw*, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988). "When determining whether the evidence is sufficient to entitle a defendant to jury instructions on a defense or mitigating factor, courts must consider the evidence in the light most favorable to defendant." *State v. Mash*, 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988) (citations omitted). Thus, "[w]here 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) (citation and quotation marks omitted).

We review challenges to the trial court's decisions regarding jury instructions de novo. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). "However, an error in jury instructions is prejudicial and requires a new trial only if there is a *reasonable possibility* that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (emphasis added) (citation and quotation marks omitted). Meanwhile, "[u]nder the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury *probably* would have reached a different result." *State v.*

Jordan, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (emphasis added). Regardless, "before engaging in plain error analysis it is necessary to determine whether the instruction complained of constitutes error." *State v. Cummings*, 361 N.C. 438, 470, 648 S.E.2d 788, 807 (2007) (citation omitted).

Defendant contends the trial court erred when it failed to instruct the jury on Defendant's right to self-defense and plainly erred when it did not instruct the jury Defendant also had the right to defense against an unlawful arrest and against use of excessive force. However, Defendant's argument ignores Defendant's own testimony at trial. It is well established within our right to self-defense that "a defendant is not entitled to a self-defense instruction where he testifies that he did not commit the underlying offense." *State v. Holshouser*, ___ N.C. App. ___, ___, 833 S.E.2d 193, 197 (2019) (citations omitted). This Court has similarly extended this reasoning to the defense of resisting an illegal arrest and defending against excessive force by a law enforcement officer. *See State v. Burwell*, 256 N.C. App. 722, 735-36, 808 S.E.2d 583, 594-95 (2017) (holding no error when the trial court "did not *sua sponte* instruct the jury on the right to resist an unlawful arrest and the right to defend oneself against excessive force by a law enforcement officer" where the defendant "*did not testify that his actions were an attempt to protect himself from excessive force*") (emphasis added)); *State v. Wells*, 59 N.C. App. 682, 684, 298 S.E.2d 73, 75 (1982) (where a defendant "contend[ed] the jury should have been instructed

on the defendant's right to resist an illegal arrest" and the defendant "denied ever striking the police officer[,]" this Court held the "trial judge properly did not submit . . . the right to resist an illegal arrest because [the] issue[] [was] not supported by the evidence").

In the present case, Defendant unequivocally and repeatedly testified he did not slam or close his front door on Officer Flowers's arm and leg. Defendant denied being at the front door when Officer Flowers tried to open it, instead testifying he was in the kitchen doorway. Therefore, under our caselaw, Defendant's testimony he did not come into physical contact with Officer Flowers precluded an instruction on self-defense and on the rights to resist an unlawful arrest and defend against excessive force during an arrest. *See Holshouser*, ___ N.C. App. at ___, 833 S.E.2d at 197; *Burwell*, 256 N.C. App. at 735-36, 808 S.E.2d at 594-95; *Wells*, 59 N.C. App. at 684, 298 S.E.2d at 75. Therefore, the trial court did not err in declining to instruct the jury as to Defendant's requested instruction of self-defense and did not plainly err in failing to instruct the jury that Defendant had the right to defend against an unlawful arrest and against an arrest made with excessive force. Because we conclude the trial court did not err, we do not reach Defendant's argument regarding prejudice.

II. Sentencing

Defendant next contends the trial court erred when it "resentenced" Defendant in his absence because he was denied his constitutional rights to notice and

opportunity to be heard.[1] "We review the propriety of an amended judgment entered outside the defendant's presence de novo." *State v. Lebeau*, ___ N.C. App. ___, ___, 843 S.E.2d 317, 320 (2020) (citation omitted).

"The written judgment entered by a trial court constitutes the actual sentence imposed on a criminal defendant; the announcement of judgment in open court is merely the rendering of judgment." *State v. Mims*, 180 N.C. App. 403, 413, 637 S.E.2d 244, 250 (2006) (citation omitted). This Court has long recognized a defendant has a right to be present when his or her sentence is imposed. *See State v. Arrington*, 215 N.C. App. 161, 166, 714 S.E.2d 777, 781 (2011) (citing *State v. Pope*, 257 N.C. 326, 330, 126 S.E.2d 126, 129 (1962)). Indeed, we have held "[w]here the written judgment represents a substantive change from the sentence pronounced by the trial court, and the defendant was not present at the time the written judgment was entered, the sentence should be vacated and the matter remanded for entry of a new sentencing judgment." *Mims*, 180 N.C. App. at 413, 637 S.E.2d at 250 (citation and quotation marks omitted). However, this Court has also recognized a few, limited exceptions where a trial court may amend a judgment outside the presence of a defendant so

[1] On appeal, the parties stipulated the "trial court subsequently corrected its judgment, after the Defendant-Appellant had given notice of appeal, and without either the Defendant-Appellant or his counsel being present." However, there appear to be discrepancies between the stipulation and the transcript; when the trial court announced Defendant's corrected sentence later the same afternoon, Defendant's trial counsel stated, "And I apologize. I should have caught that." Thus, although Defendant was not present for the announcement of his amended sentence, the transcript reflects his counsel was present.

long as the change is not considered "substantive." *See, e.g.*, *Arrington*, 215 N.C. App. at 168, 714 S.E.2d at 782 (holding "the imposition of costs on defendant outside of his presence" was not a substantive change and "did not infringe upon his 'right to be present at the time sentence is pronounced' " because the fees were "statutorily mandated[,]" "did not constitute an additional or other punishment," and were "an integral part of the sentence defendant heard imposed upon him in open court" (citation omitted)).

Recently, in *Lebeau*, this Court concluded the trial court did *not* err in amending the defendant's judgment in her absence five days after it was pronounced in open court. ___ N.C. App. at ___, 843 S.E.2d at 321-22. In *Lebeau*, the trial court amended the defendant's judgment after the initial judgment failed to impose the correct sentence and failed to announce a maximum term, a violation of several North Carolina statutes. *Id.* at ___, 843 S.E.2d at 321. On appeal, this Court reasoned the amendment did not amount to a substantive change because it "reflect[ed] the only sentence the court could legally impose given the verdict rendered—'a non-discretionary byproduct of the sentence that was imposed in open court.' " *Id.* (emphasis added) (citing *Arrington*, 215 N.C. App. at 167, 714 S.E.2d at 782.). Thus, this Court clarified: "A change is therefore not substantive when it corrects a clerical error or clarifies that a sentence will comport with applicable statutory limits on the trial court's sentencing discretion." *Id.*

In the present case, the jury found Defendant guilty of Assault on a Law Enforcement Officer Inflicting Physical Injury, a Class I felony. N.C. Gen. Stat. § 14-34.7(c)(1) (2019). The trial court sentenced Defendant in open court to a suspended sentence of 8 to 19 months, and Defendant orally noticed his intent to appeal. However, the trial court subsequently noticed Defendant's sentence was erroneous—the trial court had imposed a sentence in the aggravated range instead of the presumptive. *See* N.C. Gen. Stat. § 15A-1340.17(d) (2019). Thus, the trial court then corrected Defendant's judgment to 6 to 17 months suspended sentence—consistent with the presumptive range—and reflected the amendment on the written Judgment.

Here, as in *Lebeau*, the trial court's amendment "reflects the only sentence the court could legally impose given the verdict rendered[.]" *Lebeau*, ___ N.C. App. at ___, 832 S.E.2d at 321. Indeed, in order to sentence Defendant in the aggravated range, the trial court would need to present aggravating factors to the jury. *See* N.C. Gen. Stat. §15A-1340.16(a1) (2019) ("If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense."). Thus, the trial court did not have the authority to sentence Defendant in the aggravated range. When the trial court announced it was correcting Defendant's sentence, it was doing so to comply with the statutorily mandated sentencing guidelines. Furthermore, and in actuality, the trial court's corrected sentence reduced Defendant's potential active sentence, which remained suspended so long as Defendant complied with probation.

Therefore, the trial court's amendment of Defendant's judgment, made outside of Defendant's presence, was not a substantive change and therefore not error.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error in Defendant's trial.

NO ERROR.

Chief Judge McGEE and Judge DIETZ concur.

Report per Rule 30(e).