IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-407

Filed: 1 December 2020

Union County, Nos. 17-CRS-52022; 18-CRS-270

STATE OF NORTH CAROLINA

v.

RICHARD JAMES McINTYRE

Appeal by defendant from judgment entered 8 August 2018 by Judge Susan E. Bray in Superior Court, Union County. Heard in the Court of Appeals 4 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Laura H. McHenry, for the State.

Michael E. Casterline for defendant-appellant.

STROUD, Judge.

Defendant was convicted of breaking and entering with intent to terrorize or injure. Defendant argues he should receive a new trial because the trial court failed to give an instruction on diminished capacity. Because the evidence, including Defendant's testimony, does not raise a reasonable doubt as to whether Defendant had the ability to form the necessary specific intent to commit the crimes for which

he was charged, we conclude the trial court did not err by denying Defendant's request to instruct the jury on diminished capacity.

I. Background

On the night of 26 April 2017, Defendant went to the house of his ex-girlfriend, Kimberly Espinosa, at approximately midnight. Defendant knocked on the front door and yelled. Ms. Espinosa refused to let him inside and told him they could talk the next day. Defendant broke the door down and entered the house. Ms. Espinosa grabbed a knife from the kitchen and told Defendant he was trespassing. Defendant grabbed a different knife and cut his own arms. Defendant then went outside.

Ms. Espinosa testified that Defendant hit himself in the head with a rock and also hit his head against the side of the house. Ms. Espinosa's teenage daughter called the police. Defendant got into his car, pulled forward in the driveway, put the car in reverse, and began to back away from the house. Police arrived at Ms. Espinosa's house and arrested Defendant. Defendant was transported to a hospital to treat his wounds.

Defendant was charged with breaking or entering with intent to terrorize or injure, assault with a deadly weapon, and destruction of real property. Defendant's trial took place from 6-8 August 2018 in Superior Court, Union County. The jury found Defendant guilty of felony breaking or entering with intent to terrorize or injure and destruction of real property but not guilty of assault with a deadly weapon.

Defendant was also found guilty of being a habitual felon. The trial court sentenced Defendant accordingly, and Defendant timely appealed.

II. Standard of Review

Defendant requested a diminished capacity instruction during the charge conference, and the trial court denied Defendant's request. At the conclusion of the charge conference the trial court asked:

> THE COURT: Any other instructions that the defense is requesting?
>
> MR. STERMER: No. We would just note our objection to 305.11 not being given. That's all.

N.C.P.I.-Crim 305.11 is labeled "Voluntary Intoxication, Lack of Mental Capacity--Premeditated and Deliberate First Degree Murder." While Defendant was not charged with first degree murder, he requested to modify N.C.P.I. 305.11 to fit the charges against him. The trial court understood Defendant's request and denied it. We conclude this issue was preserved for appellate review. *See State v. West*, 146 N.C. App. 741, 743, 554 S.E.2d 837, 839 (2001) ("The purpose of Rule 10(b)(2), however, is to bring errors in jury instructions to the trial court's attention in order to prevent unnecessary new trials. '[T]his policy is met when a request to alter an instruction has been submitted and the trial judge has considered and refused the request.' Consequently, . . . our review is not restricted to plain error." (alteration in original) (citations omitted)). "Properly preserved challenges to 'the trial court's

decisions regarding jury instructions are reviewed *de novo*, by this Court.'" *State v. King*, 227 N.C. App. 390, 396, 742 S.E.2d 315, 319 (2013) (quoting *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009)).

III. Diminished Capacity Instruction

Defendant argues, "[b]ecause there was sufficient evidence to support an instruction on diminished capacity, the trial court was required to give that instruction at the Defendant's request." We disagree.

> "The jury charge is one of the most critical parts of a criminal trial." "The purpose of . . . a charge to the jury is to give a clear instruction to assist the jury in an understanding of the case and in reaching a correct verdict," including how "the law . . . should be applied to the evidence." As a result, the trial court has a duty "to instruct the jury on all substantial features of a case raised by the evidence." In the event that a "defendant's request for [an] instruction [is] correct in law and supported by the evidence in the case, the trial court [is] required to give the instruction, at least in substance." "[I]n giving jury instructions," however, "'the court is not required to follow any particular form,' as long as the instruction adequately explains 'each essential element of the offense.'" Even if a trial court errs by failing to give a requested and legally correct instruction, the defendant is not entitled to a new trial unless there is "a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial."

State v. Fletcher, 370 N.C. 313, 324-25, 807 S.E.2d 528, 537 (2017) (alterations in original) (citations omitted). "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 the defendant." *State v. Keitt*, 153 N.C. App. 671, 677, 571 S.E.2d 35, 39 (2002) (quoting *State v. Mash*, 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988)), *aff'd*, 357 N.C. 155, 579 S.E.2d 250 (2003).

> An instruction on diminished capacity is warranted where the evidence of the defendant's mental condition is sufficient to raise a reasonable doubt in the mind of a rational trier-of-fact as to whether the defendant had the ability to form the necessary specific intent to commit the crimes for which he is charged.

State v. Garcia, 174 N.C. App. 498, 505, 621 S.E.2d 292, 297 (2005) (citing *State v. Clark*, 324 N.C. 146, 163, 377 S.E.2d 54, 64 (1989)).

Defendant was found guilty of felonious breaking or entering with intent to injure or terrorize an occupant. N.G. Gen. Stat. § 14-54(a1) (2017) ("Any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is guilty of a Class H felony."). The jury was also charged on the lesser included offense of misdemeanor breaking or entering. The difference between these two offenses is that felony breaking or entering has an intent element that misdemeanor breaking or entering does not have. *See id.*

At trial, after the State rested its case, the trial court informed Defendant out of the presence of the jury that "there has been evidence presented so far that I believe gives you a shot at the voluntary intoxication defense with the testimony as it is. But again, that's just something for you to consider." Defendant then asked for a moment

to discuss this information with his attorney. After the recess, Defendant's counsel told the trial court they would be presenting evidence.

Defendant testified in detail about what happened on the night of 26 April 2017, and he explained his reasons for going to Ms. Espinosa's house that night:

> Q. I want to take you back to April 26th of 2017. I'm sure that's a date you remember.
>
> A. Yes. Would you like me to start from the beginning, tell the whole story?
>
> Q. I'll ask the questions. I'll ask the questions.
>
> A. Okay.
>
> Q. Did there come a time when you went over to where Kim Espinosa lived?
>
> A. Yes.
>
> Q. What time was that?
>
> A. Everybody -- nobody really knows the time, but I do. It was about 11:15. It was between 11:15, 11:25.
>
> Q. In the evening?
>
> A. Yes.
>
> Q. And why did you -- why had you gone over there?
>
> A. I had called Kim -- see, me and Kim were dating. I know she didn't admit to it, wouldn't say that, but we were. We were seeing each other. But I felt like something was weird. She would sometimes say she loved me, sometimes she wouldn't. Sometimes she wouldn't answer the phone. And I know now, now that I'm talking to Chad, it's because

she was playing us, dating us both. Then when she took the stand I guess she was dating somebody else at the time.

Q. So you called her?

A. I still[] cared about her. I still care about her. I wish her the best. I'm not in love with her no more but it was messing my head up. Because at the time I was trying to -- we were talking. I wanted to get back in my house. I wanted to move back with my family. Because that was my family. I dedicated my life, my business, my everything to her. And we were finally back together dating and I guess I was trying to move too fast for her and I guess she wasn't at the same place as me. Because I never lost my love for her. I still loved her. I still wanted exactly what I had, to start right where we left off. And it kind of ate me up inside because I wasn't reading her right. And I know why now. All I really wanted at the time was just to talk to her. I just want to know do you love me the same way I love you, do you mean it when you say it, are you playing me. Because I feel like something ain't right. And that's all I wanted to do. I went over there -- I called her on the phone first. All right. We talked for maybe like three minutes and that's all I was trying to get, just a straight answer. Tell me.

Q. Did you get an answer?

A. No. I didn't get an answer. She just beat around the bush and said she had to go and just hung up the phone, which is like weird. It was very rude because she's not normally like that. So I called back and I called back. I probably called back like five, six times. And I don't really live that far from her, maybe 8, 10 minutes away. So I got in the car. It was actually my sister's car at the time. I just -- it was cold out, I didn't want to take the scooter so I took the Cadillac. And I go over to her house and knock on the door. I didn't pound on her door. I didn't knock on the door like the police. I knocked on her door because I'm a

> respectable person that's not there to be mad at nobody. I just wanted to talk to Kim.

On cross examination, Defendant was asked about whether he was under the influence of alcohol at this time:

> Q. So you stated, I believe -- make sure yesterday you stated you did not have any drugs that day; is that correct?
>
> A. That day, no.
>
> Q. Okay. And you said that you –
>
> A. I was –
>
> Q. You had two glasses of wine?
>
> A. I don't know how many glasses. I didn't say two. I had a few glasses. I was drinking a little bit. My boss, Andre, he had a big one of those jugs, like one of those tumbler things of wine and I drank a few glasses to try to calm my nerves, try to figure things out. But yeah, I had a few glasses and I had a little bit, like this much left in my cup. So yes, I drove there with a little bit of wine, which is another stupid decision.
>
> Q. But you weren't drunk?
>
> A. No, I was not drunk.
>
> Q. And you don't feel like you were impaired at all?
>
> A. I didn't say I wasn't impaired at all but I wasn't drunk.
>
> Q. But you had enough of your senses to know where you were going, why you were there, you described to the jury exactly in your mind what you saw happened step by step, how the door opened and all that kind of stuff?

> A. Correct.
>
> Q. So you knew what was going on.
>
> A. Yes. I'm 100 percent confident that my testimony of what happened is what really happened. I'm not – it wasn't -- I wasn't – what's the word? I wasn't disaware of the situation and the circumstances that happened.
>
> Q. These are –
>
> A. I'm not confused about any of it. I know exactly what happened and how it happened and what exactly went down that night. I have no doubts in my mind of anything. I know what happened. And everything that I said happened is exactly how it happened and how it went.

After considering the entirety the evidence in the light most favorable to Defendant, we conclude the evidence of Defendant's mental condition does not raise a reasonable doubt as to whether Defendant had the ability to form the necessary specific intent to commit the crimes for which he was charged. *See Garcia*, 174 N.C. App. at 505, 621 S.E.2d at 297. Based upon his own testimony, he had "a little bit" of wine to drink but was not drunk and he did not have any drugs that day. He testified about why he went to Ms. Espinosa's house and that he was "not confused" about what had happened. Thus, the trial court did not err by denying Defendant's jury instruction request.

IV. Conclusion

Because the evidence did not support an instruction on diminished capacity, we conclude the trial did not err by declining to give the jury instruction.

NO ERROR.

Judges BERGER and COLLINS concur.

Report per Rule 30(e).