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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-923

Filed: 7 July 2020

Rowan County, Nos. 16 CRS 53110–11, 53113–14, 2831; 17 CRS 1267

STATE OF NORTH CAROLINA

v.

JOHNNY RINGO WALLACE

Appeal by defendant from judgments entered 2 May 2019 by Judge Anna M. Wagoner in Rowan County Superior Court. Heard in the Court of Appeals 29 April 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Adren L. Harris, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for defendant.

DIETZ, Judge.

Johnny Ringo Wallace appeals multiple criminal judgments stemming from a confrontation in which he stabbed his cousin in the neck with a knife. He argues that the trial court erred by denying his request for a self-defense instruction and by

denying his motion to dismiss. He also argues that there is a clerical error in the judgment form for one of his misdemeanor convictions.

As explained below, the trial court properly declined to instruct on self-defense because Wallace's own testimony showed there was no legally sufficient basis for that instruction. The court also properly rejected his motion to dismiss because there was substantial evidence that Wallace's cousin suffered a serious injury from the stabbing. Finally, although we agree there is an error in one of the criminal judgment forms, we are unable to determine from the record whether it was an inadvertent clerical error. We therefore remand in part for resentencing.

Facts and Procedural History

In 2016, Deanna Hildreth ended her relationship with Johnny Ringo Wallace and began dating Wallace's cousin, David Allmon. In June 2016, Wallace and Allmon got into a fight in which Wallace stabbed Allmon in the neck. At Wallace's trial on multiple charges, the jury heard different versions of events from the testimony of Wallace, Allmon, and Hildreth.

According to Wallace's version of events, he approached the back patio of Allmon's house, called to Allmon through an open door, and entered the home after hearing Allmon tell him to "come up." Wallace went to the deck located off the main bedroom, where he saw Allmon and Hildreth. He was surprised and angry to see them together.

Wallace testified that, at this point, he could only remember "snapshots" of what happened, but he recalled seeing Allmon standing by a wicker table with a knife on it. At some point, Allmon picked up the knife for what Wallace described as "self-defense." Wallace stated that Allmon began "hollering" at him, at which point Wallace attacked him: "I just take off for him. I rush him." Allmon dropped the knife during the struggle, and Wallace grabbed it to "make sure nobody gets it."

During this struggle, Hildreth hid in the bathroom. Wallace testified that, once he retrieved the knife, he knocked on the bathroom door, asking Hildreth to open it to talk. Wallace then kicked open the bathroom door, told Hildreth "I hope he's worth it all," and cut his own throat multiple times. Allmon took Wallace downstairs and out of the house. Wallace denied ever hurting Hildreth or stabbing Allmon.

Allmon offered a conflicting account in his testimony. According to Allmon, Wallace broke into his home and entered the bedroom already holding a knife, saying, "I hope it was worth it, cuz." Wallace told Allmon he would kill him, and then charged at him with the knife. Allmon testified that he was unarmed at the time but tried to defend himself. During their struggle, Wallace stabbed Allmon in the neck, driving the knife two and a half inches into Allmon's neck.

Wallace then chased after Hildreth with the knife and began banging on the bathroom door. Allmon ran to his nightstand, retrieved his handgun, pointed it at

Wallace's head and said, "I will kill you, cuz, if you make one more step." Wallace replied, "You just did," and repeatedly slashed his own neck with the knife.

Allmon also testified that Wallace kicked the bathroom door in, tried to stab Hildreth, and struck her in the head. Allmon pointed his gun at Wallace and told him to drop the knife. This time, Wallace complied.

Hildreth's testimony largely mirrored Allmon's. She testified that when she first saw Wallace coming out onto the deck, she saw that a "light glinted on" something in his hand. When the two men began fighting, Hildreth saw Wallace pressing a knife against Allmon's throat. The next thing she saw was Wallace with "his thumb up on the blade" and the knife "underneath the skin" of Allmon's neck. Her account of what happened once Wallace broke into the bathroom was consistent with Allmon's account.

Both Allmon and Hildreth described Allmon's neck injury from the fight. According to their testimony, Allmon's neck wound was bleeding when law enforcement arrived at the house. Allmon did not want to get medical treatment but Hildreth and the responding officers convinced Allmon to go.

Allmon's mother arrived and transported him to an urgent care facility for medical treatment. Allmon testified that medical personnel told him the knife had penetrated two and a half inches into his neck. The wound continued to bleed for more

than a full day and took a month to heal. It left behind what Hildreth described as a scar resembling a "dimple" or "indent."

Wallace moved to dismiss the State's case, arguing that the State failed to prove the charge of assault with a deadly weapon with intent to kill inflicting serious injury. The trial court denied the motion. Wallace also requested a self-defense instruction, but the trial court declined to give the requested instruction.

The jury found Wallace guilty of assault with a deadly weapon inflicting serious injury and a number of other charges. The trial court sentenced Wallace to life in prison for the assault with a deadly weapon conviction and Wallace's resulting status as a violent habitual felon. The trial court consolidated the remaining convictions and sentenced Wallace to 110 to 144 months in prison. Wallace appealed.

Analysis

I. Self-defense instruction

Wallace first challenges the denial of his request for a jury instruction on self-defense. We review the legal question of whether the evidence supported a jury instruction on self-defense *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009).

A defendant asserting the right of self-defense must show that he had a reasonable belief that using force was necessary to save himself from death or great bodily harm. *State v. Marsh*, 293 N.C. 353, 354, 237 S.E.2d 745, 747 (1977). It is the

jury's duty to determine the reasonableness of this belief from the facts and circumstances as they appeared to the defendant at the time. *Id.* When assessing whether to instruct on self-defense, courts view the facts in the light most favorable to the defendant. *State v. Moore*, 111 N.C. App. 649, 654, 432 S.E.2d 887, 889 (1993). If the evidence, viewed in the light most favorable to the defendant, discloses facts that are "legally sufficient" to warrant an instruction on self-defense, the trial court must give that instruction to the jury. *State v. Everett*, 163 N.C. App. 95, 100, 592 S.E.2d 582, 586 (2004).

Applying this standard, the trial court properly determined that the evidence was insufficient to warrant a self-defense instruction. During his direct testimony, Wallace described his encounter with Allmon. In this somewhat confusing initial testimony, Wallace said both that he did not think Allmon would use the knife and that he did not know what Allmon would do with the knife:

> [W]hen I see it, *I don't know. I don't believe it. I don't think he's going to use it. And he comes up with the knife.* And as we hit the table or the grill – I can't remember. I'm sorry. I just can't recall. But when we hit the – I'm just going to say the table. When we hit the table, we were throwed off balance. We both went rolling towards the right. As we hit the table, the impact caused the knife to drop.

(Emphasis added). On cross-examination, the prosecutor confronted Wallace about his testimony that he did not believe Allmon would use the knife. Wallace answered, "I never said that. I didn't know what he was going to do. He had his hand on the

knife." The prosecutor then asked Wallace to clarify what he thought Allmon was going to do with the knife:

> PROSECUTOR: So now you think what? He was going to kill you with the knife or something?
>
> WALLACE: I think they were going to use the knife in self-defense.
>
> PROSECUTOR: Oh, against you in self-defense?
>
> WALLACE: Huh?
>
> PROSECUTOR: Because you were going to attack them, right?
>
> WALLACE: I done told you I approached him. Yes, I approached him. He was on – I mean, yes. I approached him.
>
> PROSECUTOR: Mm-hmm. You said you went after him. You didn't think he was going to use it. That's what you testified to; isn't that right?
>
> WALLACE: If that's what you said, then that's what I said. I – I can't recall it exactly word for word, but yeah.

This testimony precludes a self-defense instruction. The mere possession of a weapon by someone, standing alone, is not sufficient to justify the use of force in self-defense. *See State v. Irabor*, 262 N.C. App. 490, 495–96, 822 S.E.2d 421, 425 (2018) (noting that self-defense requires evidence that the defendant reasonably believed the victim "was armed" *and* "intended to inflict death or serious bodily injury on defendant"). But even in the light most favorable to Wallace, that is all the evidence

establishes. Wallace testified that he did not think Allmon would try to attack him or kill him with the knife; instead, Wallace believed Allmon picked up the knife simply to hold it for his own "self-defense." So, although Wallace testified that Allmon was holding a knife, there is no evidence that Allmon took any steps that would indicate to a reasonable person that he would use it. Wallace also testified that Allmon did not use the knife, and that Wallace tackled Allmon and knocked the knife out of his hand moments later. Simply put, there is nothing from which the jury properly could infer that Wallace reasonably believed he needed to use force to protect himself from death or serious bodily harm. Accordingly, the trial court properly declined to instruct the jury on self-defense.

II. Motion to dismiss

Next, Wallace challenges the denial of his motion to dismiss the charge of assault with a deadly weapon inflicting serious injury.

This Court reviews the trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d. 29, 33 (2007). A trial court properly denies a motion to dismiss if there is substantial evidence that the defendant committed each essential element of the charged offense. *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* When reviewing challenges to the sufficiency of the evidence, this Court "must view the evidence in the light most favorable to the State, giving the

State the benefit of all reasonable inferences." *State v. Fritsch*, 351 N.C. 373, 378–79, 526 S.E.2d 451, 455 (2000).

Assault with a deadly weapon inflicting serious injury is defined as: "(1) an assault, (2) with a deadly weapon, (3) inflicting serious injury, (4) not resulting in death." *State v. Jones*, 353 N.C. 159, 164, 538 S.E.2d 917, 922 (2000). Wallace's motion to dismiss challenged only one of these essential elements—he argues that the State failed to present substantial evidence that Allmon sustained a "serious injury."

Our courts have limited the definition of "serious injury" in assault prosecutions to a "physical or bodily injury resulting from an assault." *State v. Morgan*, 164 N.C. App. 298, 303, 595 S.E.2d 804, 808 (2004). Under this broad definition, "[w]hether a serious injury has been inflicted depends upon the facts of each case and is generally for the jury to decide under appropriate instructions." *State v. Hedgepeth*, 330 N.C. 38, 53, 409 S.E.2d 309, 318 (1991). When deciding whether an injury is "serious" enough, the jury may consider many pertinent factors, including loss of blood, pain suffered, and necessary medical treatment for recovery; but no one factor in isolation is determinative. *Id.*

Here, the State presented evidence that medical personnel informed Allmon the knife penetrated two and a half inches into his neck:

> PROSECUTOR: All right. How far did that knife go into your neck?

> ALLMON: They said at the Quick Care about two and a half inches.

Moreover, there was other evidence of the seriousness of the stab wound, including excessive bleeding, a month of recovery, and permanent scarring. This is substantial evidence that Allmon suffered a serious injury when Wallace stabbed him in the neck. Thus, the trial court properly denied the motion to dismiss.

III. Potential clerical error

Finally, Wallace asks this Court to remand the judgments entered against him for correction of a clerical error. Although the jury found Wallace guilty of misdemeanor breaking and entering, the trial court entered the letter "F" for "felony" instead of "M" for "misdemeanor" on the judgment form for that conviction.

A "clerical error" is defined as "an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." *State v. Allen*, 249 N.C. App. 376, 380, 790 S.E.2d 588, 591 (2016). When this Court can determine from the record that a clerical error occurred, we need not vacate the sentence but instead may remand the matter for the limited purpose of correcting the error "because of the importance that the record speak the truth." *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008). Here, however, we cannot be sure from the record on appeal that this was a clerical error in the recording of the judgment. Thus, to ensure that there is no prejudicial error in Wallace's judgments, we vacate this sentence and the

corresponding sentences with which it was consolidated and remand for resentencing on those convictions.

Conclusion

We find no error in Wallace's criminal convictions. We vacate and remand in part for resentencing.

NO ERROR IN PART; VACATED AND REMANDED IN PART.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).