IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-393

No. COA 20-182

Filed 20 July 2021

Cumberland County, No. 17CRS063024

STATE OF NORTH CAROLINA

v.

GARRETT JORDAN VANN, Defendant.

Appeal by Defendant from judgment entered 25 October 2019 by Judge Claire V. Hill in Cumberland County Superior Court. Heard in the Court of Appeals 24 March 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General M. Lynne Weaver, for the State.

Sarah Holladay for the Defendant.

DILLON, Judge.

I. Background

¶ 1 The evidence at trial tended to show the following: On the evening of 3 October 2017, Defendant Garrett Jordan Vann shot Jason Tyner ("Victim") while Victim sat in the front seat of Defendant's car. Defendant's girlfriend, who is also Victim's ex-wife, was standing outside of the open front passenger seat door when the gun fired. Defendant's friend was also present.

¶ 2 The engine of the car was off, the parking brake was engaged, and the car keys were in Defendant's pocket. Nonetheless, Defendant claims he shot Victim because he was afraid that Victim would use the car to hurt Defendant, his girlfriend, or his friend. Victim died from the gunshot wound.

¶ 3 The incident occurred outside of a home belonging to a man who Victim was staying with the time. Defendant, along with his two companions, met with Victim to pick up a damaged truck that belonged to Defendant's girlfriend.[1] Earlier that day, the three of them went to Wal-Mart, where Defendant purchased a shotgun along with ammunition.[2] On the way to the meeting with Victim, Defendant asked his friend to load the gun with alternating buckshot and birdshot ammunition. When they arrived, Defendant unsheathed a non-folding knife and placed it in the back of his waistband.

¶ 4 Defendant's girlfriend went inside of the house to speak with the homeowner and Victim. Defendant was told to wait outside with his friend while she went inside. Around fifteen (15) minutes later, she and Victim emerged from the house and walked over to the damaged truck to take pictures of it for insurance purposes. Defendant eventually came over and told her that it was time for them to leave. When

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[1] The damage occurred when Victim purposefully ran the truck into some vehicles after a disagreement with a third party.

[2] He attempted to pick up the gun the day before but was delayed by a day due to an error at the store.

Defendant's girlfriend hugged Victim goodbye, Defendant was displeased with the way Victim, according to him, inappropriately touched her. Victim then asked for another hug, which she refused. As she and Defendant traveled back to Defendant's car, Victim became hostile, kicking at her feet and trying to impede her from leaving. Now near the car, Defendant pushed Victim back, but he kept approaching. Defendant then grabbed the gun, which was propped on the outside of the car, and hit Victim with its butt, knocking him to the ground. Victim quickly slid past Defendant and climbed into the front seat of Defendant's car. According to Defendant, Victim said, "I'll kill us both," as he did so.[3] With the gun aimed at Victim's head, Defendant yelled twice for him to get out of the car, to which Victim did not comply. Victim made a sudden movement in the direction of the passenger seat, so Defendant fired the gun, shattering the driver-side window and sending a bullet into Victim's forehead. The homeowner called the police after hearing the gunshot.

¶ 5 Defendant was arrested and subsequently indicted with first-degree murder and discharging a firearm into occupied property. The jury found him guilty of all charges. Defendant gave oral notice of appeal in open court.

II. Analysis

[3] The three other witnesses at the scene did not testify that Victim made this threat.

A. Jury Instructions

¶ 6 The Defendant argues, for the first time on appeal, that the trial court committed plain error in failing to instruct the jury on (1) self-defense and (2) defense of another. We disagree.

¶ 7 Plain error exists if "a fundamental error occurred at trial," meaning "a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citation and quotation omitted).

¶ 8 We conclude that no reasonable jury could find that it was reasonable for Defendant to lethally shoot Victim to protect himself or his girlfriend, when taking the facts in the light most favorable to Defendant. *See State v. Irabor*, 262 N.C. App. 490, 493, 822 S.E.2d 421, 423-24 (2018) ("In determining whether an instruction on self-defense must be given, we view the evidence in the light most favorable to the defendant"). Victim was seated in a vehicle, with the engine off, and Defendant had the keys to it. Defendant's girlfriend was near the passenger seat, but not in it, as evidenced by how the passenger seat was covered with Victim's blood, yet she was practically untouched by the gruesome debris. Defendant testified that he did not

see a weapon in Victim's hand[4] and Victim only made a slight gesture in the direction of Defendant's girlfriend, which he equated to the movement one makes when "shifting a gear." In no rational world is one justified to shoot someone in the head, from point blank range, under such unthreatening circumstances. Defendant was under no threat of death or bodily harm by Victim in the turned-off car, nor was Defendant's girlfriend in the path of danger, dwelling on the outskirt of the vehicle.

¶ 9 And even if Victim did scream, "I'll kill us both," when getting into the car, verbal threats do not justify deadly force. *Cf. State v. Rogers*, 323 N.C. 658, 667, 374 S.E.2d 852, 858 (1989) ("Mere words however abusive are not sufficient provocation to reduce second-degree murder to manslaughter[,]" as "[l]egal provocation must be under circumstances amounting to an assault or threatened assault.").

¶ 10 Finally, even if the evidence was sufficient to support an instruction on self-defense or defense of another, we conclude that the trial court's failure to instruct did not rise to the level of plain error. Based on the strength of the evidence tending to show Defendant's guilt, we conclude that it was reasonably probable that a different result would not have occurred had the jury been so instructed.

B. Excluded Testimony

[4] However, the crime scene investigators found a folded pocked knife in Victim's left hand.

¶ 11 The Defendant argues that the trial court erred in excluding certain testimony about Victim's reputation and prior acts of violence.

¶ 12 We review a trial court's decision to admit or exclude evidence for abuse of discretion. *State v. Locklear*, 363 N.C. 438, 448, 681 S.E.2d 293, 302 (2009). Under this standard, the trial court will be reversed if "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 448-49, 681 S.E.2d at 302 (citation and quotation omitted).

¶ 13 Defendant's arguments involve the evidentiary rules of character evidence, so we must briefly recite the relevant rules. Generally, "evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except evidence of a pertinent trait of character of the victim of the crime offered by an accused[.]" N.C. Gen. Stat. § 8C-1, Rule 404 (2017). "In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion." *Id.* § 8C-1, Rule 405. "In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of *specific instances* of his conduct." *Id.* (emphasis added). However, "[b]ecause a defendant may prove self-defense without demonstrating his victim's character, character is not an essential element of self-defense. Accordingly, with regard to a claim of self-defense, the victim's character

may not be proved by evidence of *specific acts*." *State v. Bass*, 371 N.C. 535, 544, 819 S.E.2d 322, 327 (2018).

¶ 14 Our Supreme Court in *State v. Corn* further enunciated these rules by stating:

> [W]hen self-defense is raised as a defense, the defendant may produce evidence of the victim's character tending to show, "(1) that the victim was the aggressor or (2) that defendant had a reasonable apprehension of death or bodily harm, or both." 1 Brandis on North Carolina Evidence, § 106 (2d rev. ed. 1982). If the defendant seeks to offer evidence for the purpose of showing the victim was the aggressor, it must be done through testimony concerning the victim's general reputation for violence, "but this rule does not render admissible evidence of specific acts of violence which have no connection with the homicide."

State v. Corn, 307 N.C. 79, 85, 296 S.E.2d 261, 266 (1982) (citation omitted).

¶ 15 Defendant argues that the trial court erred by disallowing testimony about Victim's reputation and certain prior acts of violence.

¶ 16 Defendant specifically contends that the trial court erred by barring testimony of Victim's reputation for carrying a knife. Though initially not allowing the testimony, the court eventually ruled that testimony on this point would be allowed only if the appropriate foundation was laid. After this ruling, Defendant was recalled to the stand, but Defendant did not testify to Victim's reputation for carrying a knife. The defense also had the opportunity to recall Defendant's girlfriend to testify (who

previously claimed to have similar knowledge) but she was not recalled. Accordingly, we conclude that the trial court did not commit reversible error in this regard.

¶ 17 Similarly, Defendant was prevented from testifying that Victim's reputation for violence was such that others believed Victim would kill Defendant for dating his girlfriend. Specifically, the judge excluded the evidence on hearsay grounds stating, "I will not allow testimony about alleged threats made or alleged statements made to the defendant by his friends about what the victim would do to him." Defendant argues that the evidence was not presented for its truth but to show Defendant's state of mind, i.e., whether his self-defense was reasonable. Further, Defendant argues that the trial court erred in excluding testimony concerning certain past violent acts committed by Victim.

¶ 18 After a review of the evidence, we conclude that any error with regard to the threats or the Victim's prior violent acts about which the evidence shows that Defendant was aware did not rise to the level of reversible error, given the overwhelming evidence of Defendant's guilt.

C. Constitutional Right to Present a Complete Defense

¶ 19 Defendant argues that his Constitutional right to present a complete defense was infringed upon due to the trial court's evidentiary rulings that excluded admissible evidence or delayed its presentation.

¶ 20 It is axiomatic that "[t]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *State v. Cooper*, 229 N.C. App. 442, 450, 747 S.E.2d 398, 405 (2013) (citation omitted). However, "[w]e acknowledge also our traditional reluctance to impose constitutional constraints on ordinary evidentiary rulings by state trial courts." *Id.* at 449, 747 S.E.2d at 404 (citation omitted); *see also United States v. Scheffer*, 523 U.S. 303, 308 (1998) (stating that such rules do not abridge an accused's right to present a defense so long as they are not arbitrary or disproportionate to the purposes they are designed to serve).

¶ 21 Here, after originally being prevented, Defendant was later given an opportunity to present evidence on both reputation statements and one of the prior acts. For the majority of the trial, Defendant and other witnesses testified to Victim's aggressive nature, the overwhelming fear Defendant and his girlfriend felt toward Victim, and similar evidence, which painted Victim in a violent light. The two instances of prior acts that the trial court incorrectly excluded were not enough to overcome Defendant's constitutional right to present a complete defense.

¶ 22 We, therefore, conclude that any incorrect evidentiary rulings by the trial court did not rise to the level of constitutional violation.

D. Ineffective Assistance

¶ 23 Defendant argues, in the alternative, that defense counsel was ineffective for not eliciting testimony from Defendant and his girlfriend about Victim's reputation

and prior acts after the judge lifted the evidentiary restrictions. Defendant also claims that defense counsel was ineffective by not objecting to the jury instruction.

¶ 24 To prove ineffective assistance of counsel, a defendant must first show that counsel's performance was deficient, and next, that the deficient performance was prejudicial. *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985).

¶ 25 We cannot discern from the record that Defendant was denied effective assistance of counsel that would justify a new trial. However, we dismiss this argument without prejudice to Defendant to bring a motion for appropriate relief in the trial court.

III. Conclusion

¶ 26 We conclude that Defendant received a fair trial, free from reversible error by the trial court. We dismiss Defendant's ineffective assistance of counsel claim without prejudice to file a motion in the trial court.

NO ERROR.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).