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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-761

No. COA22-171

Filed 15 November 2022

Union County, No. 19CRS52967

STATE OF NORTH CAROLINA

v.

RICKY DARREN ALDRIDGE, Defendant.

Appeal by Defendant from judgment entered 10 August 2021 by Judge Patrick T. Nadolski in Union County Superior Court. Heard in the Court of Appeals 24 August 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Thomas O. Lawton III, for the State.

Widenhouse Law, by M. Gordon Widenhouse, Jr., for Defendant-Appellant.

JACKSON, Judge.

¶ 1 Ricky Darren Aldridge (“Defendant”) appeals from judgment after a jury found him guilty of first-degree murder. After careful review, we find no error.

I. Background

¶ 2 On Sunday, 14 July 2019, deputies with the Union County Sheriff’s Office performed a well-being check at the home of Patrick Mooney. Upon arrival, deputies

learned that Mr. Mooney's friends had not spoken with him since Friday and were concerned that his dog was loose outside, and the lights were off in the house. The doors to the house were locked, but a deputy climbed up a ladder that was propped under a window at the back right corner and looked inside. The deputy saw a substantial amount of what appeared to be blood on the floor and walls in the kitchen. Deputies then kicked in the front door and found a body in the bedroom off the kitchen. The deputies noted a large amount of pooled and dried blood near the body, as well as severe lacerations and cuts to the neck area. A crime scene investigator later stated that it appeared as though the head had almost been severed from the neck. The body was identified as that of Mr. Mooney. The medical examiner testified that Mr. Mooney sustained 32 separate sharp trauma wounds, including a stab wound through his right jugular vein and right carotid artery.

¶ 3

After the investigation began, law enforcement found a WYZE surveillance camera on top of the kitchen cabinets that was powered on and recording. A detective viewed the footage through an app on Mr. Mooney's phone. The footage showed two interactions between Mr. Mooney and another man, later identified as Defendant. In the first interaction, recorded at 2:55 a.m., Mr. Mooney appears to sell drugs to Defendant. In the second interaction, recorded at 6:27 a.m., Defendant and Mr. Mooney walk inside the kitchen, Defendant closes the exterior kitchen door, and a few seconds later Defendant pulls a knife out of his pocket and stabs Mr. Mooney in

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the neck. The men are seen pushing each other across the kitchen and falling to the floor. Defendant then appears to repeatedly stab Mr. Mooney while he is on top of Mr. Mooney on the kitchen floor. The attack continues in and out of view of the camera, until both Defendant and Mr. Mooney remain out of frame and only sounds of the attack can be heard. After a brief period of silence, Defendant re-enters the frame, puts his hat back on, turns the lights off, washes his hands in the kitchen sink, and then leaves the house.

¶ 4 Law enforcement next determined that the last completed call on Mr. Mooney's cell phone was with Defendant at 6:23 a.m. on 13 July 2019. Thereafter, Defendant was placed into custody and a search warrant was executed at Defendant's house. Detectives found a garbage bag containing a steering wheel cover and a camo hat with blood on the rim. Mr. Mooney's DNA was found on both items. Additionally, Defendant's DNA was found under Mr. Mooney's fingernails.

¶ 5 Defendant was arrested on 15 July 2019. During an interview with law enforcement, Defendant eventually admitted that he had an altercation with Mr. Mooney inside the house. On 26 August 2019, Defendant was indicted for first-degree murder and robbery with a dangerous weapon.

¶ 6 The matter came on for trial on 2 August 2021. The State presented a total of ten witnesses and played the videos of the two interactions between Defendant and Mr. Mooney for the jury. At the close of the State's evidence, Defendant's trial counsel

made a motion to dismiss both charges and the State abandoned the robbery with a dangerous weapon charge. The trial court denied Defendant's motion to dismiss the first-degree murder charge. Defendant's counsel then notified the trial court that Defendant would not be testifying or putting on evidence. Defendant's counsel repeated the same in the presence of the jury.

¶ 7 Later, during the initial charge conference, Defendant's counsel requested an instruction on second-degree murder and the trial court declined. The trial court went into recess until the next day.

¶ 8 The following morning, Defendant announced through his counsel that he had decided overnight that he wanted to testify. The State did not object and, after questioning Defendant, the trial court decided to reopen the evidence and allow Defendant to testify.

¶ 9 Defendant testified to the following:

¶ 10 Defendant knew Mr. Mooney through a man named Travis from whom he bought drugs. Defendant often bought drugs from Travis at Mr. Mooney's house. On one occasion, on or about 5 July 2019, Defendant was sitting outside Mr. Mooney's house and Mr. Mooney, in what was meant to be a joke, snuck up behind Defendant and shot a gun near his head.

¶ 11 On the night of Mr. Mooney's death, Defendant went to buy drugs from Travis at Mr. Mooney's house, but Travis never showed up. Defendant sat in his truck

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getting high and drinking from about 11:00 p.m. until Mr. Mooney came outside and told Defendant that Travis was not coming. Defendant then followed Mr. Mooney inside the house and Mr. Mooney agreed to sell Defendant ten dollars' worth of crack instead of the standard twenty. Defendant returned to his truck and remained there outside of Mr. Mooney's house the rest of the night, thinking Travis would arrive at the house around 6:30 a.m.

¶ 12 At approximately 6:27 a.m., Defendant went back to the house and encountered Mr. Mooney again. Defendant decided to play a joke on Mr. Mooney by putting his flat-bladed knife to Mr. Mooney's neck.¹ Defendant then dropped his arm but decided to really try and scare Mr. Mooney so he put the knife up to Mr. Mooney's neck again, which was the incident that the jurors watched on video.

¶ 13 After this second incident, Mr. Mooney went at Defendant and the men began fighting and struggling over the knife. Mr. Mooney sustained his wounds during this struggle as he tried to grab the knife and wrestle it away from Defendant.

¶ 14 Following Defendant's testimony, a second charge conference occurred during which Defendant's counsel requested an instruction on second-degree murder and on voluntary manslaughter based on heat of passion or imperfect self-defense because

¹ Defendant asserted that this first fake stabbing incident was captured on video, but that part of the video was deleted. Defendant has no explanation as to how the video got deleted.

there was evidence of mutual combat between Defendant and Mr. Mooney during which Defendant made efforts to protect himself. The trial court agreed to instruct on second-degree murder and declined to instruct on voluntary manslaughter. Defendant did not object to the proposed jury instructions at the end of the charge conference or request any further modifications.

¶ 15 The jury found Defendant guilty of first-degree murder and the trial court sentenced Defendant to life in prison without the possibility of parole.

¶ 16 Defendant entered notice of appeal in open court.

II. Analysis

¶ 17 Defendant argues that the trial court erred in refusing to instruct the jury on voluntary manslaughter based on imperfect self-defense because there was at least some evidence to suggest that a violent fight occurred between Defendant and Mr. Mooney during which Defendant could use deadly force to repel a threat of death or serious bodily harm. We disagree.

¶ 18 Although Defendant's trial counsel did not object to the jury charge when it was given, his counsel's earlier request for an instruction on voluntary manslaughter during the charge conference is sufficient to preserve for appellate review the issue of whether the trial court erred in not giving the requested instruction. *State v. Hood*, 332 N.C. 611, 617, 422 S.E.2d 679, 682 (1992). We review a 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).

¶ 19 “Voluntary manslaughter is an intentional killing without premeditation, deliberation or malice but done in the heat of passion suddenly aroused by adequate provocation or in the exercise of imperfect self-defense where excessive force under the circumstances was used or where the defendant is the aggressor.” *State v. Lyons*, 340 N.C. 646, 663, 459 S.E.2d 770, 779 (1995). Imperfect self-defense is established if the following two elements exist at the time of the killing, “but the defendant, without murderous intent, either was the aggressor in bringing on the affray or used excessive force”:

- (1) it appeared to [the] defendant and he believed it to be necessary to kill the deceased in order to save himself from death or great bodily harm; and
- (2) [the] defendant’s belief was reasonable in that the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness[.]

Id. at 661, 459 S.E.2d at 778.

¶ 20 “The trial court must consider the evidence in the light most favorable to the defendant in deciding whether the evidence is sufficient to entitle a defendant to jury instructions on self-defense.” *Id.* at 550, 673 S.E.2d at 680-81. However, “when there is no evidence from which a jury could reasonably find that [the] defendant, in fact, believed it to be necessary to kill his adversary to protect himself from death or great

bodily harm, defendant is not entitled to have the jury instructed on self-defense.” *State v. Harvey*, 372 N.C. 304, 308, 828 S.E.2d 481, 484 (2019) (internal marks and citation omitted).

¶ 21 The evidence, taken in the light most favorable to Defendant, does not show that Defendant had formed a reasonable belief that it was necessary to kill Mr. Mooney in order to protect himself from death or great bodily harm. First and foremost, Defendant appeared to contend throughout his testimony, both on direct and cross-examination, that his use of force which resulted in Mr. Mooney’s death was unintentional or accidental:

Q. So during the struggle, what did you do with your – the knife that you have in your hand?

A. At that particular time, I did not take Patrick Mooney down. Patrick Mooney took me down. Patrick Mooney was on top of me beating the fire out of me. I’m laying on the ground, on the floor on my side. I’m holding the knife. ***I’m doing everything I can not to harm this rascal.*** Nothing was said between the two of us. I actually cause a vision of him and I could just like see a rage. This guy is like flipped out. It’s as if he visualized the knife and it was like it got worse, like – he attacked the knife. Well, there goes the struggle. We’re fighting. We’re – we are fighting. We’re fighting for the same thing. His intentions I cannot tell you, but at the time if he got his hands on that knife, well y’all would probably be looking at my picture instead of his.

[PROSECUTOR]: Objection to that.

THE COURT: Sustained.

...

Q. Okay. *Now, again, from the autopsy photographs Mr. Mooney appears to have multiple lacerations and stab wounds. Do you know how he got those?*

A. *Really no, other than at the time we were fighting over the knife he spins me off my side.* When he grabs my arm, he literally picks me up, is on top of me and fighting for the knife, we're fighting for the knife. Well, he's grabbing the blade, grabbing the blade. He's cutting his hands. Obviously, I noticed that he had cut his hands. At which point he changed from grabbing the blade to grabbing my wrist. He's grabbing my wrist trying to get the knife, best of my knowledge is what he's doing. At which point he still is unsuccessful, at which point I'm still trying to keep the thing away from him. At which point my left hand gets ripped away. My right hand is being drug away by Patrick. Patrick is taking the knife from me. This is when we're on the floor in front of the refrigerator.

...

Q. Do you have an explanation as to how the blood got on the floor in those areas at Mr. Mooney's residence?

A. It was really right there at the kitchen refrigerator. I really can't say that I do. There towards the wood heater I believe is where I started slipping. And at that particular time my hand, which testimony had that I had him by the hair was actually entangled.

Q. I'm sorry, sir?

A. My hand was actually entangled in his hair, which means that when he turned to leave the kitchen area (indicating), he pulled me. I didn't have no choice at that time but to go with him. So I did not have him by the hair, my hand was entangled in his hair.

Q. *Did you knowingly inflict the wounds to Mr. Mooney's neck?*

A. *Knowingly, no.* I had this conversation with a psychiatrist.

...

Q. Your testimony was that you didn't intentionally inflict the wounds on Mr. Mooney's neck?

A. I never –

Q. *Do you know how the wounds got on Mr. Mooney's neck?*

A. *Fighting for the knife.*

Q. Okay. And is it your contention that that was a mutual struggle between you and Mr. Mooney?

A. Well, yes. There was a struggle, as you all can see, throughout the whole part of the first video that you watched. There definitely is a fight going on.

Q. Were you fighting to protect yourself?

A. At that particular time once I got back to my feet, that is when I took a defensive stand. So in my right mind knowing exactly what I was doing or what I was trying to keep from happening to me, I cannot exactly recall anything other than what I've seen in that video. And it's tough there for a very, very long time, and even still watching it. *Because at no time was anything intentional. I never had a clear mind that I was set to kill him.* I never went there to harm him. I never went there period to anything that has happened to occur.

...

Q. How many times did you slash his throat, Mr.

Aldridge?

A. I don't remember slashing but I do remember fighting in that area. And we were in a way that when we were separating –

Q. Just doesn't work out, does it?

A. He's like pulling me, I'm trying to pull away.

Q. So he did it to himself?

A. [The medical examiner] stated that it was like a saw cut. And yes, by him holding it and me trying to pull it (demonstrating) and then once it comes through from his hand, yeah.

Q. He did it himself?

A. Well no.

Q. And then he did it himself again?

...

Q. . . . *My question is did he do it to himself?*

A. *He had part in it.*

Q. Did he do it to himself again?

A. It was only one time. **(T p 1209)**

(Emphasis added.)

Our Supreme Court held in *State v. Williams*, 342 N.C. 869, 873-74, 467 S.E.2d 392, 394 (1996), that a defendant who insisted he never aimed a pistol at anyone, that he did not intend to shoot anyone, and that he did not know someone had been shot

was not entitled to a self-defense instruction. The Court reasoned that “a reasonable person believing that the use of deadly force was necessary to save his or her life would have pointed the pistol at the perceived threat and fired at the perceived threat.” *Id.* at 873, 467 S.E.2d at 394. Our Court has applied this holding to a similar situation in which a defendant “testified that the gun simply ‘went off,’ he ‘didn’t aim the gun,’ he did not know anyone had been shot, he did not pull the trigger on purpose, and he did not intend to kill the decedent.” *State v. Gaston*, 229 N.C. App. 407, 412, 748 S.E.2d 21, 25 (2013).

¶ 23 As in *Williams*, Defendant’s testimony here that he was trying not to harm Mr. Mooney, that he did not intentionally or knowingly harm Mr. Mooney, that Mr. Mooney cut himself by trying to grab for the knife, and that Mr. Mooney had a part in stabbing himself in the neck does not evince that Defendant had formed a belief that it was necessary to kill Mr. Mooney to save himself. In Defendant’s telling, he was continually trying to wrestle the knife away from Mr. Mooney and in the process, Mr. Mooney sustained 32 stab wounds including the stab wounds to his jugular and carotid artery that resulted in his death. Defendant’s statement—“I never had a clear mind that I was set to kill him”—summarily counters that he had formed a belief that he had to kill Mr. Mooney in order to protect himself from death or great bodily harm.

¶ 24 Additionally, Defendant never testified that he was afraid of Mr. Mooney or that he feared for his life or feared sustaining great bodily harm. Although repeatedly

testifying that he engaged in an all-out brawl with Mr. Mooney, the closest Defendant came to testifying he was afraid of Mr. Mooney during the fight was his speculative remark that if Mr. Mooney had gotten control of the knife, the jury might have been looking at Defendant's picture rather than Mr. Mooney's. The trial court sustained the prosecutor's objection to this remark.

¶ 25 Accordingly, Defendant was not entitled to an instruction on voluntary manslaughter based on imperfect self-defense and the trial court did not err in declining to give such an instruction.

III. Conclusion

¶ 26 For the aforementioned reasons, the trial court did not err in denying Defendant's request for an instruction on voluntary manslaughter based on imperfect self-defense.

NO ERROR.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).