IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-814

No. COA22-366

Filed 6 December 2022

New Hanover County, Nos. 20 CRS 52565; 20 CRS 2654

STATE OF NORTH CAROLINA

v.

FREDERICK DOUGLAS BROWN, Defendant.

Appeal by Defendant from judgment entered 10 September 2021 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 16 November 2022.

Attorney General Josh H. Stein, by Assistant Attorney General South A. Moore, for the State.

Paul F. Herzog for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Frederick Douglas Brown appeals from the trial court's judgment entering a jury verdict finding him guilty of simple assault and felony breaking or entering with the intent to terrorize or injure. Defendant argues the trial court erred because it improperly defined the term "terrorize" in its jury instructions concerning the crime of breaking or entering with the intent to terrorize or injure the occupant.

We find no error.

I. Factual and Procedural Background

¶ 2 Defendant and Keiosha Judd met in 2019. Defendant and Ms. Judd formed a close relationship, talked frequently, and saw each other often. By 2020, Defendant and Ms. Judd were "casually dating."

¶ 3 Around 10:30 p.m. on 27 March 2020, Ms. Judd awoke to the sound of someone at her front door. Ms. Judd could hear Defendant and another individual talking on her front porch. Ms. Judd eventually went to the door, opened it slightly, and began to ask whoever it was to leave because she had to work the next day. When Ms. Judd cracked open the door, Defendant kicked the door open, grabbed Ms. Judd by her throat, and demanded, "Where is he at?" Defendant then dragged Ms. Judd to her bedroom, and forced her onto her bed, and threw her onto the floor. Defendant began to choke Ms. Judd. Ms. Judd grabbed her phone and attempted to call 911, but Defendant took it from her and threw it across the room.

¶ 4 Ms. Judd eventually freed herself from Defendant, found her phone, and called 911. Defendant ordered Ms. Judd to get dressed and to get in the car with him. Ms. Judd delayed long enough for an ambulance to arrive at her home. When the ambulance arrived, Ms. Judd jumped in and hurriedly asked the driver to leave because she thought Defendant was trying to kill her. Defendant then got into his car and drove away.

¶ 5 A New Hanover County grand jury indicted Defendant on a number of charges arising from the 27 March 2020 incident at Ms. Judd's home, including felony breaking or entering with intent to injure or terrorize the occupant. During trial, the trial court instructed the jury that, for the charge of felony breaking or entering, the jury should consider the term "terrorize" to mean "to put a person in some high degree of fear, a statement of intense flight or apprehension." Defendant made no objection to the trial court's jury instructions. The jury found Defendant guilty of felony breaking or entering with intent to terrorize or injure, as well as simple assault. Defendant gave notice of appeal in open court.

II. Analysis

¶ 6 Defendant argues that the trial court erred when it defined the term "terrorize" in its jury instructions concerning the crime of breaking or entering with the intent to terrorize or injure the occupant. Defendant did not object to the trial court's jury instructions, and therefore did not preserve the issue for appeal. Instead, Defendant asks us to conduct plain error review.

¶ 7 The North Carolina Supreme Court "has elected to review unpreserved issues for plain error when they involve either (1) errors in the judge's instructions to the jury, or (2) rulings on the admissibility of evidence." *State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (citations omitted). Plain error arises when the error is "so basic, so prejudicial, so lacking in its elements that justice cannot have been

done[.]" *State v. Odom,* 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citation and quotation marks omitted). "Under the plain error rule, [the] 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) (citation omitted). Because of this high standard, "[p]lain error review should be used sparingly, only in exceptional circumstances, to reverse criminal convictions on the basis of unpreserved error." *State v. Thompson*, 254 N.C. App. 220, 224, 801 S.E.2d 689, 693 (2017) (citation omitted).

¶ 8 Defendant's sole argument is that the trial court committed plain error when it defined the term "terrorize" to mean "to put a person in some high degree of fear, a state of intense flight [sic] or apprehension." Defendant contends that the trial court should have instructed the jury with the recommended pattern jury instructions for this crime, following the language of N.C.P.I.–CRIM 214.47. N.C.P.I –CRIM 214.47. defines the word "terrorize," in footnote two, as: "to fill or overpower with terror; terrify." N.C.P.I.–CRIM 214.47., n. 2. Defendant argues that the trial court's chosen definition of "terrorize" uses overbroad words, such as "some" and "high degree of fear," and therefore fails to correctly instruct the jury on the heightened state of fear needed to convict the defendant under the recommended pattern jury instructions.

¶ 9 The definition of "terrorize" intended by the trial court has been used by our courts before to understand the element of "terrorizing" in criminal statutes. In the

context of kidnapping, for instance, this Court often defines "terrorize" as follows: "Terrorizing is defined as more than just putting another in fear. It means putting that person in some high degree of fear, a state of intense fright or apprehension." *State v. Harrison*, 169 N.C. App. 257, 264, 610 S.E.2d 407, 414 (2005) (citations and internal quotation marks omitted); see also *State v. Bonilla*, 209 N.C. App. 576, 585, 706 S.E.2d 288, 295 (2011).

¶ 10 Our Court has also used this definition in the context of the crime of breaking or entering with the intent to terrorize or injure the occupant as codified in N.C. Gen. Stat. § 14-54(a1) (2021). In *State v. Griffin*, this Court first used this definition in the context of N.C. Gen. Stat. § 14-54(a1) in a published opinion. *State v. Griffin*, 264 N.C. App. 490, 826 S.E.2d 253 (2019). In *Griffin*, the defendant opened the front door of the victim's home and entered uninvited. The defendant and the victim began fighting and the defendant hit, kneed, and kicked the victim, preventing him from getting away. *Id.* at 491–92, 826 S.E.2d at 255. The defendant was then charged with felony breaking or entering with intent to terrorize or injure the occupant under N.C. Gen. Stat. § 14-54(a1). *Id.* at 491, 826 S.E.2d at 255. The jury found the defendant guilty and the defendant appealed. *Id.* at 492, 826 S.E.2d at 255.

¶ 11 During its consideration of N.C. Gen. Stat. § 14-54(a1), this Court recognized that, up until that point, there were no published decisions considering what constitutes "intent to terrorize or injure" under the statute. As a result, this Court

looked to other offenses with similar elements for guidance. *Id.* at 495, 826 S.E.2d at 257. Analyzing the definition of "terrorize" in kidnapping cases, this Court in *Griffin* stated "'terrorize' has been repeatedly defined for the purposes of kidnapping as more than just putting another in fear. It means putting that person in some high degree of fear, a state of intense fright or apprehension." *Id.* (citations omitted). Applying that definition, this Court found that the evidence presented was sufficient for the jury to find that the defendant intended to terrorize the victim because it could find the "circumstances put the victim in a high degree of fear." *Id.* at 496, 826 S.E.2d at 257.

¶ 12 Comparing *Griffin* with the present case, the State charged Defendant with the same crime under similar circumstances as in *Griffin.* Here, the trial court defined "terrorize" using the same definition employed in *Griffin*. Because this Court previously found this definition of "terrorize" sufficient to satisfy the intent element of N.C. Gen. Stat. § 14-54(a1), we are bound by precedent to affirm that definition here. The trial court committed no error when it defined "terrorize" for the crime of breaking or entering with the intent to terrorize to mean "to put a person in some high degree of fear, a state of intense flight[1] [sic] or apprehension."

[1] It is unclear from the record and transcript whether the trial court used the word "fright" or "flight" in instructing the jury. Defendant contends that, if the transcript is correct

¶ 13 The use of pattern jury instructions is encouraged, however, a "[f]ailure to follow the pattern instructions does not automatically result in error. 'In giving instructions the court is not required to follow any particular form,' as long as the instruction adequately explains each essential element of an offense." *State v. Bunch,* 363 N.C. 841, 846, 689 S.E.2d 866, 870 (2010) (citation omitted). Defendant concedes as much in his brief, stating that "the appellate courts of this state are not bound by the pattern jury instructions." The trial court must only give jury instructions that

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and the trial court did use the word "flight," then the jury was "given an entirely defective instruction on a term crucial to the disposition of this case." We disagree.

Assuming the trial court did use the word "flight," its instructions were not rendered fatally defective in a manner amounting to plain error. As long as its instruction sufficiently explains each essential element, the trial court is not required to use any particular language. *State v. Bunch*, 363 N.C. 841, 846, 689 S.E.2d 866, 870 (2010) (citation omitted). Further, jury instructions are construed as a whole and incorrect words may be read as a rational mind would understand them in context:

> A charge must be construed contextually, and isolated portions of it will not be held prejudicial when the charge as a whole is correct. If the charge as a whole presents the law fairly and clearly to the jury, the fact that isolated expressions, standing alone, might be considered erroneous will afford no ground for a reversal. Furthermore, insubstantial technical errors which could not have affected the result will not be held prejudicial. The judge's words may not be detached from the context and the incidents of the trial and then critically examined for an interpretation from which erroneous expressions may be inferred.

State v. McWilliams, 277 N.C. 680, 684–85, 178 S.E.2d 476, 479 (1971) (citations omitted).

The trial court's instruction, as a whole, correctly conveyed the gravity of fear that Defendant must have intended Ms. Judd to feel. The difference in causing someone to experience fright versus causing a desire to flee is not so substantial to cause prejudicial, plain error in this case.

correctly frame the law. Given this Court's considerations in *Griffin*, we cannot say that the trial court incorrectly framed what evidence was necessary for the jury to find that the State had proven Defendant's intent to terrorize. The trial court did not err, much less commit plain error, in its jury instructions.

III. Conclusion

¶ 14 We hold the trial court properly defined the term "terrorize" when it provided the jury instructions for the crime of breaking or entering with the intent to terrorize or injure under N.C. Gen. Stat. § 14-54(a1).

NO ERROR.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).