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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-128

Filed 05 September 2023

Surry County, No. 19CRS053071

STATE OF NORTH CAROLINA

v.

JONATHAN DANIEL GOINGS

Appeal by Defendant from judgment entered 1 September 2022 by Judge Angela B. Puckett in Surry County Superior Court. Heard in the Court of Appeals 22 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Amanda J. Reeder, for the State-Appellee.

Sarah Holladay for Defendant-Appellant.

COLLINS, Judge.

Defendant Jonathan Daniel Goings appeals from a judgment and commitment entered upon a guilty verdict for assault with a deadly weapon inflicting serious injury. Defendant argues that the trial court erred by declining to instruct the jury on the lesser included offense of assault inflicting serious bodily injury because the jury could have found that an assault was committed without finding that a deadly

weapon was used. Because there was no evidence presented at trial that would allow a rational juror to acquit Defendant of assault with a deadly weapon inflicting serious injury yet convict him of assault inflicting serious bodily injury, the trial court did not err by declining to instruct the jury on the lesser included offense.

I. Background

Defendant was tried beginning 31 August 2022 for assault with a deadly weapon inflicting serious injury. At trial, the state presented evidence tending to show that on 2 October 2019, Mr. Christopher Mark Brooks, who was Defendant's blind cousin, was sitting on Defendant's back porch talking with Defendant when an argument broke out between them. Defendant accused Brooks of stealing gold coins from their grandfather and told him, "somebody has to lose a finger over that today." Brooks placed his right hand on the table and stated, "if you think somebody is going to lose a damn finger . . . right there's a whole . . . hand, take what you want." Defendant struck Brooks' hand with a machete, partially severing Brooks' fingers. Defendant then threw the machete off the porch, went inside, and locked the door. Defendant agreed to call an ambulance on the condition that Brooks would tell responders that Brooks was going outside with the machete to cut a walking stick and then fell on the machete.

Defendant testified in his own defense and gave an alternate version of events. Defendant's testimony tended to show that on 2 October 2019, Brooks and Defendant were drinking tequila on Defendant's porch. Defendant told Brooks to be careful

because Defendant's machete was on the table. After about 30 minutes, Defendant went inside to pour more tequila and Brooks stated that he was going to head to the woods and check out a tree for a walking stick. While Defendant was inside, he heard Brooks scream and went to check on Brooks. Defendant called 911 and applied a tourniquet until paramedics arrived. Defendant did not know how Brooks was injured, but he did not see the machete after the incident and did not attempt to locate it.

During the charge conference, Defendant asked that the jury be allowed to determine whether the weapon was a deadly weapon; the trial court denied this request. Defendant also requested the jury be instructed on the lesser included offense of assault inflicting serious bodily injury; the trial court also denied this request. The jury returned a guilty verdict and the trial court entered judgment and commitment sentencing Defendant to 33 to 52 months' imprisonment. Defendant gave oral notice of appeal.

II. Discussion

Defendant argues that the trial court erred by declining to instruct the jury on the lesser included offense of assault inflicting serious bodily injury. Specifically, Defendant argues that "it was for the jury to decide whether Brooks was attacked with a machete, and if so, whether a machete was a deadly weapon under the facts of this case."

"A trial court's decision not to give a requested lesser included offense

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instruction is reviewed de novo on appeal.” *State v. Gettys*, 219 N.C. App. 93, 100, 724 S.E.2d 579, 585 (2012) (italics and citation omitted). A trial court’s failure to instruct the jury on a lesser included offense is error if “there was evidence presented at trial that, viewed in the light most favorable to the defendant, would permit a rational [juror] to acquit the accused of the greater charge and convict him or her of the lesser offense.” *State v. Brichikov*, 383 N.C. 543, 553, 881 S.E.2d 103, 111 (2022).

Assault inflicting serious bodily injury is a lesser included offense of assault with a deadly weapon inflicting serious injury. *State v. Lowe*, 150 N.C. App. 682, 685, 564 S.E.2d 313, 315 (2002) (citation omitted). The distinguishing feature between the offenses is whether a deadly weapon was used. *See id.* at 685, 564 S.E.2d at 316. “An instrument which is likely to produce death or great bodily harm under the circumstances of its use is properly denominated a deadly weapon.” *State v. Joyner*, 295 N.C. 55, 64, 243 S.E.2d 367, 373 (1978) (citation omitted). “[W]here the alleged deadly weapon and the manner of its use are of such character as to admit of but one conclusion, the question as to whether or not it is deadly . . . is one of law, and the Court must take the responsibility of so declaring.” *State v. McCoy*, 174 N.C. App. 105, 112, 620 S.E.2d 863, 869 (2005) (citation omitted).

In *McCoy*, this Court considered whether a knife was a deadly weapon as a matter of law. The State introduced evidence at trial that the defendant stabbed the victim several times and that the wounds were still visible over a month later. *Id.* The defendant presented no conflicting evidence as to the nature of the knife or its

manner of use. *Id.* This Court held that the knife was a deadly weapon as a matter of law based on “the evidence of the knife’s use and the injuries produced[.]” *Id.*

Here, the State presented evidence that a machete caused Brooks’ injury, and the defense presented no conflicting evidence. Given the machete’s use, and the injuries produced, the trial court correctly determined that the machete was a deadly weapon as a matter of law. Because there was no evidence that something other than the machete was involved, and because the machete was properly classified as a deadly weapon, there was no evidence presented at trial that would allow a rational juror to acquit Defendant of assault with a deadly weapon inflicting serious injury yet convict him of assault inflicting serious bodily injury. Accordingly, the trial court did not err by declining to instruct the jury on the lesser included offense of assault inflicting serious bodily injury.

III. Conclusion

For the foregoing reasons, the trial court did not err by declining to instruct the jury on the lesser included offense.

NO ERROR.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).