IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-3

Filed 16 January 2024

Pender County, No. 20 CRS 50730

STATE OF NORTH CAROLINA

v.

DANIEL LEWIS WILLOUGHBY, SR.

Appeal by defendant from judgment entered 28 April 2022 by Judge Richard Kent Harrell in Pender County Superior Court. Heard in the Court of Appeals 17 October 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Michael T. Wood, for the State.

Mark Montgomery for defendant-appellant.

ZACHARY, Judge.

Defendant Daniel Lewis Willoughby, Sr., appeals from the judgment entered upon his conviction for second-degree murder. After careful review, we conclude that Defendant received a fair trial, free from prejudicial error.

BACKGROUND

On 3 May 2020, Defendant was at home with four of his friends and family

members, including Defendant's son Danny Junior. Early in the morning, Danny Junior discovered his former girlfriend ("Ms. Brannon") yelling and knocking on his bedroom window from outside in the front yard. Ms. Brannon and Danny Junior had dated periodically for approximately eight years, and Ms. Brannon lived with Danny Junior in Defendant's home until recently. On the morning of 3 May 2020, Ms. Brannon went to Defendant's home to retrieve her clothing and demanded to take a shower, and she and Danny Junior argued about those matters through the window. Although Ms. Brannon eventually left, she returned, and the pair resumed their argument through the window; this recurred throughout the day.

Around 4:00 or 5:00 p.m., Defendant heard Ms. Brannon and Danny Junior arguing through the window again, and Defendant announced, "[e]nough of this" or that he had "had enough[.]" Defendant walked onto the front porch of his home, about 38 feet from Ms. Brannon, who was standing in the front yard beside Danny Junior's window. Defendant brandished his handgun and Ms. Brannon said, "Oh, well, you're going to [expletive] shoot me, well then shoot me." A houseguest who observed this interaction from the front doorway testified that Defendant then "drew his weapon and shot her." Defendant shot Ms. Brannon twice. She fell to the ground and died at the scene.

On 31 August 2020, a Pender County grand jury indicted Defendant for second-degree murder. This matter came on for trial on 25 April 2022. On 28 April 2022, the jury returned its verdict finding Defendant guilty of second-degree murder. The trial

court entered judgment upon the verdict and sentenced Defendant to 200–252 months in the custody of the North Carolina Division of Adult Correction. Defendant gave oral notice of appeal in open court.

DISCUSSION

Defendant argues that the trial court committed reversible error by declining to instruct the jury on the defense of habitation; by declining to instruct the jury on the lesser-included offense of involuntary manslaughter; by striking a portion of a witness's testimony; and by redacting a portion of the officer's bodycam footage introduced by the State. We disagree.

Statutory Defense of Habitation

We first address Defendant's argument that the trial court erred when it denied his request at the charge conference to instruct the jury on the defense of habitation. Defendant maintains that "[t]here was evidence from which the jury could have concluded that [Defendant] shot [Ms. Brannon] as she was within the curtilage of [Defendant]'s house after she had been told to stay away[,]" thereby warranting a jury instruction on the defense of habitation.

Our General Assembly enacted legislation codifying the common-law defense of habitation. *See* N.C. Gen. Stat. § 14-51.2 (2021). A defendant is entitled to the statutory defense of habitation when the evidence, taken in the light most favorable to the defendant, supports that the defendant used deadly force "to prevent unlawful entry into the home or to terminate an unlawful entry by an intruder." *State v. Kuhns*,

260 N.C. App. 281, 285, 817 S.E.2d 828, 831 (2018) (emphases omitted) (citation omitted).

In *Kuhns*, this Court explained that our defensive force "statutes provide two circumstances in which individuals are justified in using deadly force, thus excusing them from criminal culpability." *Id.* (quoting *State v. Lee*, 370 N.C. 671, 674, 811 S.E.2d 563, 566 (2018)). "Pursuant to N.C. Gen. Stat. § 14-51.3(a), a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if" (1) that "person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself . . . or another;" or "(2) under the circumstances permitted by N.C. Gen. Stat. § 14-51.2." *Id.* (cleaned up).

N.C. Gen. Stat. § 14-51.2 states, in relevant part, that a "lawful occupant of a home . . . is presumed to have held a reasonable fear of imminent death or serious bodily harm . . . when using defensive [and deadly] force . . . if both of the following apply":

> (1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, . . . or if that person had removed or was attempting to remove another against that person's will from the home . . . .
>
> (2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

N.C. Gen. Stat. § 14-51.2(b)(1)–(2).

The presumption under section 14-51.2 is rebuttable, and it will not apply if the person against whom the defensive force is used had "the right to be in . . . the home" and was not subject to any domestic violence or pretrial supervision order of no contact. *Id.* § 14-51.2(c)(1). The presumption also does not apply where the person against whom force was used had "discontinued all efforts to unlawfully and forcefully enter" or had "exited[.]" *Id.* § 14-51.2(c)(5).

"The prime purpose of a court's charge to the jury is the clarification of issues, the elimination of extraneous matters, and a declaration and an application of the law arising on the evidence." *Kuhns*, 260 N.C. App. at 284, 817 S.E.2d at 830 (citation omitted). "[I]t is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence." *Id.* (citation omitted). "The trial court must give a requested instruction that is a correct statement of the law and is supported by the evidence." *Id.* (cleaned up). The evidence is viewed in the light most favorable to the defendant. *State v. Mash*, 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988). On appeal, we review the trial court's jury instructions de novo. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009).

We conclude that the evidence in this case, even viewed in the light most favorable to Defendant, rebutted the presumption that Defendant had a reasonable fear of death or bodily injury warranting his use of deadly force against Ms. Brannon. The trial court therefore did not err when it declined to instruct the jury on the

defense of habitation.

The facts presented in the instant case are plainly distinguishable from those of *Kuhns*, in which the evidence supported a jury instruction on the defense of habitation where "[d]espite numerous requests to leave and multiple orders from law enforcement, [the alleged attacker] continued to return to [the] defendant's property while repeatedly threatening him with bodily harm." 260 N.C. App. at 288, 817 S.E.2d at 832.

By contrast, in the case at bar, an eyewitness to the shooting testified that Ms. Brannon was standing in the front yard and was not coming toward Defendant before Defendant shot at her from his front porch. Defendant also admitted to officers that Ms. Brannon was not acting in a threatening manner, and there was no evidence that Ms. Brannon charged at him or threatened him in any way. Rather, the evidence showed that Ms. Brannon stood approximately 38 feet away and exclaimed, "Oh, well, you're going to . . . shoot me," a sentiment that she reiterated, in shock, after Defendant then shot her. Additionally, evidence showed that Defendant was "calm" when officers arrived at the scene, and Defendant repeatedly told officers that he did not intend to shoot Ms. Brannon, but rather that he was aiming at a brick pile in the front yard. Thus, even viewed in the light most favorable to Defendant, the evidence did not support that Defendant was in fear of imminent harm when he shot Ms. Brannon, and the State sufficiently rebutted the presumptions accorded to him under N.C. Gen. Stat. §§ 14-51.2 and 14-51.3.

Moreover, we note that "a defendant who testifies that he did not intend to shoot [his alleged] attacker is not entitled to an instruction under N.C. Gen. Stat. § 14-51.2 because his own words disprove the rebuttable presumption that he was in reasonable fear of *imminent* harm." *State v. Cook*, 254 N.C. App. 150, 155, 802 S.E.2d 575, 578 (2017), *aff'd per curiam*, 370 N.C. 506, 809 S.E.2d 566 (2018); *see also id.* at 156, 802 S.E.2d at 579 (Murphy, J., concurring) ("Under holdings of our Supreme Court, it is unlawful for a person to use a warning shot as a means of self-defense . . . instead of shooting to kill one's attacker.").

Defendant repeatedly told officers that he aimed the gun and fired at a brick pile near Ms. Brannon. Because Defendant merely intended to fire a warning shot, he did not, as a matter of law, subjectively believe that he needed to use deadly force against the victim. *Id.* at 155, 802 S.E.2d at 578 (majority opinion). This further establishes the inapplicability of the statutory defense of habitation. *Id.*; *cf. State v. Lee*, 370 N.C. 671, 675, 811 S.E.2d 563, 566 (2018) ("[W]hen, as here, the defendant presents competent evidence of self-defense at trial, the trial court must instruct the jury on a defendant's right to stand his ground . . . .").

Accordingly, the evidence did not support a jury instruction on the defense of habitation under N.C. Gen. Stat. § 14-51.2 and, therefore, the trial court did not err in declining to deliver such instruction.

Involuntary Manslaughter Instruction

Defendant next argues that the trial court erred in declining to instruct the

jury on the offense of involuntary manslaughter, which is a lesser-included offense of second-degree murder. The State asserts that "[b]ecause no evidence suggested this was an accidental discharge of the weapon, involuntary manslaughter was inapplicable."

"It is well settled that a defendant is entitled to have all lesser degrees of offenses supported by the evidence submitted to the jury as possible alternative verdicts." *State v. Wilson*, 283 N.C. App. 419, 435, 873 S.E.2d 41, 52 (2022) (citation omitted), *aff'd as modified*, ___ N.C. ___, ___ S.E.2d ___ (2023). However, "when the State's evidence is clear and positive with respect to each element of the offense charged and there is no evidence showing the commission of a lesser-included offense, it is not error for the trial court to refuse to instruct on the lesser offense." *State v. Matsoake*, 243 N.C. App. 651, 658, 777 S.E.2d 810, 814–15 (2015) (cleaned up), *disc. review denied*, 368 N.C. 685, 781 S.E.2d 485 (2016).

"[I]nvoluntary manslaughter is the unlawful and unintentional killing of another without malice which proximately results from an unlawful act not amounting to a felony nor naturally dangerous to human life, or by an act or omission constituting culpable negligence." *State v. Brichikov*, 383 N.C. 543, 554–55, 881 S.E.2d 102, 112 (2022) (cleaned up). As explained by our Supreme Court, a charge of involuntary manslaughter involving firearms generally arises from an incident involving an accidental death:

> It seems that, with few exceptions, it may be said that

> every unintentional killing of a human being proximately caused by a wanton or reckless use of firearms, in the absence of intent to discharge the weapon, or in the belief that it is not loaded, and under circumstances not evidencing a heart devoid of a sense of social duty, is involuntary manslaughter.

State v. Foust, 258 N.C. 453, 459, 128 S.E.2d 889, 893 (1963).

The evidence presented here did not warrant an instruction on involuntary manslaughter. Defendant contends that the fact that "he told the police that he was shooting at some bricks rather than [Ms. Brannon], apparently as warning shots[,]" was "alone . . . sufficient to raise the inference . . . entitling him to the requested instruction." However, Defendant's admission that he intentionally fired his weapon militates against his argument. The evidence shows that Ms. Brannon was fatally wounded when Defendant intentionally discharged his handgun under circumstances "naturally dangerous to human life[.]" *Brichikov*, 383 N.C. at 555, 881 S.E.2d at 112 (citation omitted). Accordingly, the trial court did not err in declining to instruct the jury on the lesser-included offense of involuntary manslaughter.

Stricken Testimony

We next address Defendant's argument that he is entitled to a new trial because the trial court erred by striking a portion of a witness's testimony.

Our review of a trial court's ruling on the admissibility of evidence is limited to review for an abuse of discretion. *State v. Robinson*, 115 N.C. App. 358, 361, 444 S.E.2d 475, 477, *disc. review denied*, 337 N.C. 697, 448 S.E.2d 538 (1994). Moreover,

"[t]o establish prejudice based on evidentiary rulings, [the] defendant bears the burden of showing that a reasonable possibility exists that, absent the error, a different result would have been reached" by the jury. *State v. Lynch*, 340 N.C. 435, 458, 459 S.E.2d 679, 689 (1995), *cert. denied*, 517 U.S. 1143, 134 L. Ed. 2d 558 (1996).

Defendant takes issue with the striking of the following exchange at trial, which occurred during defense counsel's cross-examination of the houseguest who witnessed the shooting from the front doorway of Defendant's home:

> [DEFENSE COUNSEL]: Okay. Prior to [Defendant] getting up out of the bedroom [to head toward the front porch and confront Ms. Brannon], you remember hearing the words—
>
> [THE STATE]: Objection.
>
> [DEFENSE COUNSEL]: —"crazy bitch"—
>
> [THE STATE]: Objection.
>
> THE COURT: Approach the bench.
>
> . . . .
>
> THE COURT: Alright. Objection sustained.
>
> . . . .
>
> [DEFENSE COUNSEL]: Do you remember telling [the detective] that you heard somebody say—
>
> [THE STATE]: Objection.
>
> [DEFENSE COUNSEL]: —"a crazy bitch"—
>
> [THE STATE]: Objection.

> [DEFENSE COUNSEL]: —"is coming through the window"—
>
> [THE COURT]: Sustained.
>
> [THE STATE]: Motion to strike.
>
> [THE COURT]: Members of the jury, you will disregard the last question.

According to Defendant, the trial court improperly struck this testimony, which constituted relevant and admissible evidence of Defendant's state of mind. However, the houseguest was asked whether *he* remembered hearing the statement at issue, not whether *Defendant* heard it. Thus, the houseguest's testimony was not evidence of Defendant's state of mind at the time of the shooting. Accordingly, the stricken statement was not relevant to the ultimate fact in issue, and the trial court did not err in excluding it. *See* N.C. Gen. Stat. § 8C-1, Rule 402; *see also State v. Roberts*, 268 N.C. App. 272, 280, 836 S.E.2d 287, 294 (2019) ("Irrelevant evidence is inadmissible."), *disc. review denied*, 374 N.C. 271, 839 S.E.2d 350 (2020).

Redaction of State's Exhibit 3

Finally, Defendant argues that the trial court erred by declining to play for the jury the entire contents of the State's Exhibit 3, the responding officers' body camera footage. The trial court redacted a portion of the footage, which contained Danny Junior's statements that Ms. Brannon "tried to cut him as she was reaching in the window with a knife in her hand" and that she "was trying to get in the window with

a knife." Defendant contends (1) that the excluded statements were not hearsay because "the statements tended to show that [Defendant] reasonably thought that [Ms. Brannon] was attempting to forcibly enter the home"; (2) that the statements were relevant because they "would have bolstered the defense of habitation by indicating that [Danny] Junior and his nephew believed [Ms. Brannon] was on the verge of breaking into the house through a window with [a] knife"; and (3) that excluding the statements "violated the Rule of Completeness."

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c). Hearsay is inadmissible at trial, with limited exceptions. *Id*. § 8C-1, Rule 802. However, "[w]henever an extrajudicial statement is offered for a purpose other than proving the truth of the matter asserted, it is not hearsay." *State v. Miller*, 344 N.C. 658, 674, 477 S.E.2d 915, 925 (1996) (citation omitted). Under Rule 803(3), hearsay evidence may be admitted to show the declarant's then-existing "state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)[.]" N.C. Gen. Stat. § 8C-1, Rule 803(3) (2021). And as ever, the statements must also be relevant. *State v. Lathan*, 138 N.C. App. 234, 236, 530 S.E.2d 615, 618, *disc. review denied*, 352 N.C. 680, 545 S.E.2d 723 (2000).

As explained above with regard to the houseguest's testimony, here, the redacted statements from State's Exhibit 3 tended to show *Danny Junior's* state of

mind; there was no evidence that Defendant heard those statements in real time or that the statements affected *Defendant's* state of mind at the time of the shooting. *Cf., e.g.*, *State v. Corbett*, 269 N.C. App. 509, 564, 839 S.E.2d 361, 402 (2020) (concluding that the trial court committed prejudicial error in striking the defendant's testimony where "the significance of [the defendant]'s testimony" that he heard his daughter scream "Don't hurt my dad" was "manifest" in that it was "directly relevant to [the defendant]'s belief that his life was threatened in relation to his plea of self-defense" (cleaned up) (citing *State v. Webster*, 324 N.C. 385, 389, 378 S.E.2d 748, 751 (1989))), *aff'd*, 376 N.C. 799, 855 S.E.2d 228 (2021).

As the State notes, "there was no evidence that Defendant heard these out-of-court statements or possessed this same information on the day of the shooting[,]" and therefore, the redacted portion of the footage was not relevant to Defendant's state of mind. Accordingly, the trial court did not err in excluding the redacted portion of the footage on this ground. *See Roberts*, 268 N.C. App. at 280, 836 S.E.2d at 294.

Finally, the redaction of Danny Junior's statements on the bodycam footage did not violate the Rule of Completeness. Rule 106 of the North Carolina Rules of Evidence provides that "[w]hen a . . . recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other . . . recorded statement which ought in fairness to be considered contemporaneously with it." N.C. Gen. Stat. § 8C-1, Rule 106. "The purpose of the completeness rule codified in Rule 106 is merely to ensure that a misleading

impression created by taking matters out of context is corrected on the spot[.]" *State v. Thompson*, 332 N.C. 204, 220, 420 S.E.2d 395, 403–04 (1992) (cleaned up). The rule of completeness does not apply if the additional proffered materials "are neither explanatory of nor relevant to the passages that have been admitted." *Id.* at 220, 420 S.E.2d at 404. "The trial court decides what is closely related" under Rule 106, and on appeal, this Court's "standard of review is whether the trial court abused its discretion." *Id.* at 220, 420 S.E.2d at 403.

The portion of the bodycam footage that Defendant contends was improperly excluded under Rule 106 is of a different conversation between Danny Junior—who did not witness the shooting—and law enforcement officers; it was not part of the conversation between Danny Junior and Defendant. Thus, when the redacted bodycam footage was introduced into evidence, Defendant's version of events that he relayed to the officers was not "out of context" or incomplete. *See id.* at 220, 420 S.E.2d at 404 ("[The] defendant must demonstrate that the tapes and transcripts of the two telephone calls were somehow out of context when they were introduced into evidence . . . ."). Nor has Defendant shown that it was otherwise unfair—amounting to an abuse of discretion, no less—for the trial court to redact statements that Defendant did not hear. *See*, *e.g.*, *State v. Broyhill*, 254 N.C. App. 478, 495, 803 S.E.2d 832, 844 (2017), *disc. review denied*, 370 N.C. 694, 811 S.E.2d 588 (2018).

Accordingly, the trial court did not err in redacting this portion of the bodycam footage under the rule of completeness. *See Thompson*, 332 N.C. at 220, 420 S.E.2d

at 404.

CONCLUSION

For the reasons stated herein, we conclude that Defendant received a fair trial, free from error.

NO ERROR.

Judges WOOD and STADING concur.

Report per Rule 30(e).