IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-380

Filed 20 February 2024

Mecklenburg County, Nos. 19 CRS 229733, 229735

STATE OF NORTH CAROLINA

v.

PARIS KEEWAN MOORE

Appeal by defendant from judgments entered 28 October 2022 by Judge William R. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 28 November 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Allison J. Newton, for the State.

Office of the Public Defender, by Assistant Public Defender Julie Ramseur Lewis, for defendant-appellant.

ZACHARY, Judge.

Defendant Paris Keewan Moore appeals from the judgments entered upon a jury's verdicts finding him guilty of assault with a deadly weapon and assault on a female. After careful review, we conclude that Defendant received a fair trial, free from error.

I. BACKGROUND

The victim and Defendant are the parents of two sons from their previous relationship. On the evening of 5 August 2019, Defendant sat with their two sons at the victim's apartment, along with Defendant's third son from a current relationship. The victim was not home but was scheduled to return by 11:00 p.m., at which point Defendant needed to leave to pick up his girlfriend at work.

When the victim arrived home after midnight, she and Defendant began to argue. Defendant left the apartment with his other son, and they got in the car, which Defendant's current girlfriend owned. However, the victim followed Defendant to the parking lot, where she opened the car door and stood between him and the door, and the argument continued. Defendant testified that after the victim tried to hit him, he put the car in reverse, turned his head, and hit the gas pedal. The car door hit the victim and she fell to the ground.

According to Defendant, he stopped the car and got out to help the victim up. When she started swinging at him again, Defendant got back in the car. The victim then ripped off one of the windshield wipers and began hitting the vehicle with it; Defendant exited the car to retrieve the windshield wiper from her but was unsuccessful, so he got back inside the car. The victim then tore off the other windshield wiper, and when Defendant got out of the car again, the victim began hitting Defendant with it.

When he recounted the incident at trial, Defendant testified: "I tried to grab her. That wasn't working to calm her down, so we got to tussling over the windshield wiper. . . . Once I seen that I was stronger, you know, I snatched it one way, then I snatched it all with all my might to the other way, thinking, like, I could snatch it out her hand, but . . . she, like, went in the air and hit the pavement." Defendant testified that, after the victim hit the pavement, he "talk[ed] s*** for a while. Then . . . I got one windshield wiper up, fit it on the hood of the car," and "tried to get the other windshield wiper from" the victim. Defendant further testified that, "to be honest, after that, you know, I was frustrated, and I finally hit her. I did hit her one time." The victim began to cry and they "had words[.]" Defendant then "g[o]t in the car, and [the victim] was standing there as [he] drove off." Defendant left with his son to pick up his girlfriend from work.

A neighbor who heard the incident called 9-1-1. Charlotte-Mecklenburg Police Officer Cecil Furr responded to the scene and found the victim sitting in the parking lot. Officer Furr testified that the victim's forehead was bleeding and that she was in distress. Emergency Medical Services transported the victim to the hospital.

When Defendant arrived at his girlfriend's house after picking her up from work, officers were waiting to arrest him. On 19 October 2020, a Mecklenburg County grand jury indicted Defendant for assault with a deadly weapon inflicting serious injury and assault on a female.

This matter came on for trial in Mecklenburg County Superior Court on 25 October 2022. The jury returned verdicts finding Defendant guilty of assault on a female and assault with a deadly weapon, a lesser-included offense of assault with a deadly weapon inflicting serious injury. On 28 October 2022, the trial court entered judgments upon the verdicts and sentenced Defendant to (1) 150 days in the custody of the Misdemeanant Confinement Program on the conviction for assault with a deadly weapon; and (2) 150 days in the custody of the Misdemeanant Confinement Program on the conviction for assault on a female, suspended subject to 24 months' supervised probation to begin upon completion of his sentence for assault with a deadly weapon. Defendant gave oral notice of appeal in open court.

II. DISCUSSION

On appeal, Defendant argues that (1) the trial court erred in denying his motions to dismiss all charges because the State did not present sufficient evidence that he "intentionally assaulted" the victim; (2) the trial court erred in instructing the jury on disjunctive theories of assault on a female; and (3) the trial court erred in instructing the jury on flight.

A. Denial of Motions to Dismiss

Defendant first argues that the State failed to present sufficient evidence that he "had the actual intent to assault [the victim] by hitting her with an automobile" where both Defendant and the victim testified that Defendant was not looking at the victim when he caused the car door to hit her and knock her onto the ground.

"[W]e review the denial of a motion to dismiss de novo." *State v. Golder*, 374 N.C. 238, 250, 839 S.E.2d 782, 790 (2020) (citation omitted). In ruling on a motion to dismiss, "the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [the] defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is the amount necessary to persuade a rational juror to accept a conclusion." *Golder*, 374 N.C. at 249, 839 S.E.2d at 790 (cleaned up).

In evaluating a defendant's motion to dismiss, the trial court views the evidence in the light most favorable to the State. *Id.* at 246, 839 S.E.2d at 788. "[T]he State is entitled to every reasonable intendment and every reasonable inference to be drawn" from the evidence. *Id.* at 250, 839 S.E.2d at 790 (citation omitted). "[I]f the record developed at trial contains substantial evidence, whether direct or circumstantial, or a combination, to support a finding" of each essential element of the charged offense (or a lesser-included offense), "the case is for the jury and the motion to dismiss should be denied." *Id.* (cleaned up); *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

In this case, the State charged Defendant with one count each of assault on a female pursuant to N.C. Gen. Stat. § 14-33(c)(2) and assault with a deadly weapon inflicting serious injury pursuant to N.C. Gen. Stat. § 14-32(b). Section 14-33(c)(2)

provides that "any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, . . . he . . . [a]ssaults a female, he being a male person at least 18 years of age[.]" N.C. Gen. Stat. § 14-33(c)(2) (2021). Section 14-32(b) provides that "[a]ny person who assaults another person with a deadly weapon and inflicts serious injury shall be punished as a Class E felon." *Id.* § 14-32(b).[1]

"One of the essential elements of both assault on a female and assault with a deadly weapon inflicting serious injury is 'an assault.' " *State v. Dew*, 379 N.C. 64, 70, 864 S.E.2d 268, 273 (2021) (citing N.C. Gen. Stat. § 14-33(c)(2) and § 14-32(b) (2019)). An "assault" is "an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another . . . ." *State v. Roberts*, 270 N.C. 655, 658, 155 S.E.2d 303, 305 (1967) (citation omitted). The "show of force . . . must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm." *Id.* (citation omitted); *see State v. Thompson*, 27 N.C. App. 576, 577, 219 S.E.2d 566, 568 (1975) ("The Court has also approved the general common law rule that an assault is an intentional offer

[1] Later, in charging the jury, the trial court also instructed on the offense of, and the jury ultimately found Defendant guilty of, assault with a deadly weapon pursuant to N.C. Gen. Stat. § 14-33(c)(1), a lesser-included offense of the charge of assault with a deadly weapon inflicting serious injury. *See State v. Weaver*, 264 N.C. 681, 683, 142 S.E.2d 633, 635 (1965) ("Assault with a deadly weapon is a general misdemeanor, ... an essential element of the felony created and defined by [N.C. Gen. Stat. §] 14-32, being an included less[er] degree of the same crime." (cleaned up)). This section provides that "any person who commits any assault . . . is guilty of a Class A1 misdemeanor if, in the course of the assault, . . . he or she . . . [i]nflicts serious injury upon another person *or uses a deadly weapon*[.]" N.C. Gen. Stat. § 14-33(c)(1) (emphasis added).

or attempt by force or violence to do injury to the person of another."), *cert. denied*, 289 N.C. 141, 220 S.E.2d 800 (1976).

"An assault requires the intent to cause apprehension of an imminent offensive or harmful contact." *State v. Bediz*, 269 N.C. App. 39, 42, 837 S.E.2d 188, 191 (2019) (cleaned up). "A defendant's intent is seldom provable by direct evidence and must usually be proved through circumstantial evidence." *Id.* (citation omitted). "The surrounding circumstances include the foreseeable consequences of a defendant's deliberate actions as a defendant must be held to intend the normal and natural results of his deliberate act." *Id.* (citation omitted).

In *Bediz*, the defendant contended that the trial court erred in denying his motion to dismiss the charge of misdemeanor assault with a deadly weapon on the ground that the State failed to "present sufficient evidence that [he] intentionally touched [Officer] Wayman with the passenger side-view mirror while parking his car." *Id*. The State presented evidence that the defendant was angry and "swerved toward[ ]" the law enforcement officers, "even though there was ample room for [the defendant] to maneuver around them." *Id*. at 42, 837 S.E.2d at 192 (cleaned up).

This Court concluded that "[t]hese circumstances could allow a reasonable person to believe that [the d]efendant intended to hit [Officer] Wayman, or at least intended to put [Officer] Wayman in fear of immediate bodily harm." *Id.* at 43, 837 S.E.2d at 192. Moreover, the defendant's actions "could foreseeably lead to [the d]efendant's car hitting [Officer] Wayman." *Id.* "As the trial court was permitted to

consider these 'foreseeable consequences' of [the d]efendant's actions as evidence of [his] intent, the State provided substantial evidence of each element of assault." *Id.* (citation omitted). Accordingly, we determined that the trial court did not err by denying the defendant's motion to dismiss the assault charge. *Id.*

The evidence in the instant case, when viewed in the light most favorable to the State, was similarly sufficient for a jury to find that Defendant intended to assault the victim with the vehicle. Indeed, the dispositive facts are not in dispute. Defendant and the victim were arguing, and Defendant knew that the victim had "pulled the door open" and was standing "between him and the door of the car" when he turned, "put the car in reverse, . . . felt the first hit [by the victim, and] . . . hit the gas to get away from her. The car door hit her."

As in *Bediz*, "[t]hese circumstances could allow a reasonable person to believe that Defendant intended to hit [the victim], or at least intended to put [the victim] in fear of immediate bodily harm." *Id.*; *see State v. Baskin*, 190 N.C. App. 102, 109, 660 S.E.2d 566, 572 ("Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." (citation omitted)), *disc. review denied*, 362 N.C. 475, ___ S.E.2d ___ (2008). In addition, although Defendant was not looking at the victim when he hit the gas, the evidence supported a jury finding that Defendant's actions "could foreseeably lead to [the] car hitting" the victim. *Bediz*, 269 N.C. App. at 43, 837 S.E.2d at 192. "The surrounding circumstances include the foreseeable consequences of [D]efendant's deliberate

actions as [D]efendant must be held to intend the normal and natural results of his deliberate act." *Id.* at 42, 837 S.E.2d at 191 (citation omitted).

Thus, the trial court did not err in denying Defendant's motions to dismiss the charges.

B. Assault on a Female and Disjunctive Jury Instructions

Defendant further contends that because the State presented "insufficient evidence . . . that [he] committed an intentional assault . . . by hitting [the victim] with an automobile," the trial court erred by instructing the jury in the disjunctive that it could find Defendant guilty of assault on a female on the basis of either "hitting her with an automobile and/or striking her on the head." Because we conclude that the State presented substantial evidence tending to show that Defendant committed an intentional assault with regard to hitting the victim with the car door, we need not reach this argument.

C. Instruction on Flight

Defendant next argues that the trial court erred in instructing the jury, over Defendant's objection, on his flight from the scene. Defendant contends that the State presented no evidence that he was attempting to avoid apprehension, and that but for this instruction, the jury would have returned verdicts of not guilty. We disagree.

On appeal, we review de novo a defendant's challenge to the trial court's jury instructions. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009).

It is well established that "[e]vidence of a defendant's flight following the commission of a crime may properly be considered by a jury as evidence of guilt or consciousness of guilt." *State v. King*, 343 N.C. 29, 38, 468 S.E.2d 232, 238 (1996) (citation omitted). Yet the trial court may not instruct the jury on the defendant's flight unless "there is some evidence in the record reasonably supporting the theory that [the] defendant fled after commission of the crime charged[.]" *State v. Irick*, 291 N.C. 480, 494, 231 S.E.2d 833, 842 (1977). "[T]he relevant inquiry [is] whether there is evidence that [the] defendant left the scene of the [crime] and took steps to avoid apprehension." *State v. Levan*, 326 N.C. 155, 165, 388 S.E.2d 429, 434 (1990).

In the present case, Defendant left the scene with knowledge that the victim was injured, but without rendering or summoning aid to her. Defendant then picked up his girlfriend from work and went to her house, where law enforcement officers arrested him.

Assuming, *arguendo*, that the trial court erred by instructing the jury that it could consider Defendant's flight as evidence of his guilt, this instruction did not constitute prejudicial error. Prejudicial error "relating to rights arising other than under the Constitution of the United States" exists "when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen. Stat. § 15A-1443(a).

In the case at bar, there is ample evidence from which a jury could find Defendant guilty of assault with a deadly weapon *and* assault on a female. Defendant and the victim testified at length at trial. Defendant admitted to physically assaulting the victim before he left the scene, and there was substantial evidence that he hit the victim with the automobile, as discussed above.[2] Moreover, the trial court explicitly instructed the jury that "proof of [flight] is not sufficient, in itself, to establish [Defendant's] guilt[.]" *See State v. Wirt*, 263 N.C. App. 370, 379, 822 S.E.2d 668, 674 (2018) ("We presume that jurors attend closely the particular language of the trial court's instructions . . . and strive to understand, make sense of, and follow the instructions given them." (cleaned up)).

Based on the foregoing, there is no reasonable possibility that a different result would have been reached at Defendant's trial, had the trial court declined to instruct the jury on flight. *See* N.C. Gen. Stat. § 15A-1443(a). Accordingly, we conclude that there was no prejudicial error.

III. CONCLUSION

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

NO ERROR.

Judges TYSON and FLOOD concur.

[2] Defendant also testified to a third instance during the altercation where he pulled the victim to the ground with one of the broken windshield wipers.

Report per Rule 30(e).