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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-635

Filed 19 March 2024

Burke County, No. 20 CRS 52824

STATE OF NORTH CAROLINA

v.

GEORGE LEE ALLISON, Defendant.

Appeal by defendant from judgment entered 28 October 2022 by Judge Jacqueline D. Grant in Burke County Superior Court. Heard in the Court of Appeals 6 February 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Alvin W. Keller, Jr., for the State.*

*Cooley Law Office, by Craig M. Cooley, for defendant-appellant.*

DILLON, Chief Judge.

Defendant George Lee Allison appeals his conviction for second-degree murder. We conclude Defendant received a fair trial, free of reversible error.

I. Background

On 13 December 2020, Defendant shot and killed his friend Brandon Adams. The evidence presented at trial tended to show that Adams and his girlfriend Pamela

had a dispute earlier that day. Pamela sought solace at Defendant's home and refused to leave when Adams told her to leave. Defendant repeatedly asked Adams to leave, and eventually Defendant shot Adams, killing him. A jury convicted Defendant of second-degree murder, and he was sentenced to 144 to 155 months incarceration. Defendant appeals.

## II. Analysis

Defendant presents multiple arguments on appeal, which we address in turn. Defendant's arguments revolve around the "castle doctrine," an affirmative defense which allows the lawful occupant of a home to use deadly force to repel another trying to enter the home or to remove someone against their will from the home. N.C. Gen. Stat. § 14-51.2(b)(1)–(2) (2023).

### A. Jury Instructions

At trial, Defendant requested that the jury be instructed on the castle doctrine. The trial court gave the pattern jury instructions (N.C.P.I. – Crim. 308.80), to which Defendant did not object. However, on appeal, Defendant argues that the instruction was deficient in several ways. Because Defendant failed to object at trial, we review for plain error. *See State v. Morgan*, 359 N.C. 131, 162, 604 S.E.2d 886, 905 (2004).

For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty.

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*State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (cleaned up).

One aspect of the jury instructions that Defendant contests is the language regarding the castle doctrine’s “presumption of reasonableness” (*i.e.*, the presumption that a defendant had a reasonable fear of imminent death or serious bodily harm when using force to defend the home). He argues that, because none of the five statutorily designated circumstances that rebut the reasonableness presumption were present, *see* N.C. Gen. Stat. § 14-51.2(c), the jury should have been instructed that it was mandatory to presume Defendant satisfied the reasonableness presumption.

However, our Court has held that “the castle doctrine’s rebuttable presumption [of reasonableness] is not limited to the five scenarios listed in the statute.” *State v. Austin*, 279 N.C. App. 377, 384, 865 S.E.2d 350, 356 (2021). Rather, the castle doctrine “is effectively a burden-shifting provision, creating a presumption in favor of the defendant that can then be rebutted by the State.” *Id.* “[I]f the State presents substantial evidence from which a reasonable juror could conclude that a defendant did not have a reasonable fear of imminent death or serious bodily harm, the State can overcome the presumption and create a fact question for the jury.” *Id.*

Though there was some evidence of Adams’ bad motives on the night in question, there was other evidence the jury could have found to rebut the presumption of reasonableness. The State presented evidence showing that Adams was unarmed, as no weapons were found on the scene except Defendant’s weapon;

Adams was physically limited due to recent neck surgery; and Adams was non-aggressive at the time of his death because (1) Adams only used words, (2) there was no evidence that Adams tried to force entry through the door, and (3) there were no defensive wounds on Defendant. Taken together, this evidence could convince the jury that Defendant did not have a reasonable fear of imminent death or serious bodily harm at the time he shot Adams.

In sum, we conclude the State presented substantial evidence that Defendant did not have a reasonable fear of imminent death or bodily harm, thus overcoming the reasonableness presumption and creating a question of fact for the jury to decide.

Therefore, assuming *arguendo* there was any error in the jury instructions, we cannot say the error had a probable impact on the jury's finding that Defendant was guilty because there was sufficient evidence presented to rebut the presumption of reasonableness and, thus, to rebut Defendant's entitlement to the castle doctrine defense. Thus, if there was any error, it did not rise to the level of plain error.

#### B. Motion to Dismiss

Defendant also argues the trial court erred in denying his motion to dismiss because the State failed to present substantial evidence that he did not satisfy the castle doctrine, which would grant him immunity.

“Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo.” *State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016).

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“Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.” *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citations omitted).

As discussed above, we conclude the State has presented substantial evidence to rebut the presumption created by the castle doctrine. When viewed in the light most favorable to the State, *see State v. Bates*, 313 N.C. 580, 581, 330 S.E.2d 200, 201 (1985), the State showed that Defendant did not have a reasonable fear of imminent death or serious bodily harm, given that Adams was unarmed, physically limited, and not aggressive.

Though there were contradictions between testimony given by Defendant and the State’s witnesses, that does not warrant a dismissal of the case. *See State v. Fritsch*, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000) (“Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.”).

Thus, we hold the trial court did not err in denying the motion to dismiss.

III. Conclusion

In sum, we conclude there was no plain error in the trial court’s jury instructions. Further, we conclude the trial court did not err in denying Defendant’s motion to dismiss.

NO ERROR.

Judges ZACHARY and FLOOD concur.

Report per Rule 30(e).