State v. Forbes

153 N.C.App. 524 (2002) | Cited 0 times | Court of Appeals of North Carolina | October 15, 2002

UNPUBLISHED

Wilbert Radel Forbes (defendant) was tried by a jury and convicted of first degree murder and sentenced to life imprisonment on 16 August 2001. For the reasons discussed herein, we find no error.

The State presented evidence at trial which tended to show the following: On 26 September 2000, defendant Wilbert Radel Forbes, his brother Ernest Forbes, James Duncan, Ronnie Duncan, and William Dobson traveled together in a van to a logging site in Halifax County. The men were members of a logging crew scheduled to work that day. During the drive to the logging site, defendant and his brother began arguing because Ernest did not stop at a conveniencestore where the crew usually stopped.

Upon arriving at the logging site, Ernest got out of the van and walked away, and defendant got out, punched Ronnie Duncan in the side and said "watch this." Duncan then testified that defendant told his brother "if you can do so much without me on Saturdays go grease the loader and change the oil." Ernest stopped, turned around and said to defendant, "why do you f--- with me so much." Ernest then started back towards defendant, and the two began pushing and shoving. Duncan then got in between the two men and separated them, and Ernest told defendant "if I had any knife I would cut your m --- f--- throat." Duncan testified that Ernest did not have a knife at the time.

Duncan then testified that defendant pulled out a gun, pointed it at Ernest and said to Duncan, "you don't believe I'll blow his m --- f--- brains out?" Duncan told defendant to "stop playing," but defendant pulled the hammer back, said to Ernest "I'll blow your m --- f ---," and pulled the trigger. Ernest died from a gunshot wound to the head.

Defendant testified that the shooting was accidental. Defendant stated that Ernest pulled out a pocketknife, and said he would cut defendant's head off. Defendant then pulled out his gun and cocked it, and Ernest closed the knife. Defendant then testified that "I was turning to Ronnie to my right rear and [Ernest] pushed and when he did it the gun went off."

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Defendant was convicted of murder and sentenced to life imprisonment without parole. Defendant appeals. Defendant's sole argument on appeal is the trial court erred by refusing his request for an instruction on accident. Defendant asserts that he testified repeatedly that the killing was accidental, and that the gun went off while he and his brother were engaged in "horseplay." Accident is a complete defense to a homicide charge. State v. Phillips, 264 N.C. 508, 142 S.E.2d 337 (1965). Accordingly, defendant contends that it was error for the trial court to not instruct on accident and to instead instruct on involuntary manslaughter.

After careful review of the record, briefs and contentions of the parties, we find no error. Our Supreme Court has stated:

A killing will be excused as an accident when it is unintentional and when the perpetrator, in doing the homicidal act, did so without wrongful purpose or criminal negligence while engaged in a lawful enterprise. "The defense of accident 'is triggered in factual situations where a defendant, without premeditation, intent, or culpable negligence, commits acts which bring about the death of another.'" However, the evidence does not raise the defense of accident where the defendant was not engaged in lawful conduct when the killing occurred. State v. Riddick, 340 N.C. 338, 342, 457 S.E.2d 728, 731 (1995) (citations omitted); see also State v. Turner, 330 N.C. 249, 262, 410 S.E.2d 847, 854 (1991).

In the case sub judice, the defendant testified that when he and his brother arrived at the logging site, they had been joking around, engaged in horseplay. When his brother walked away, defendant continued with his teasing, telling him to "keep your hands off of me you might have some type of disease." Defendant'sbrother came "running back up" and "pulled his knife out." Although the victim had a knife, defendant testified that he didn't believe he would hurt him with it. Rather than walk away, defendant pulled out his pistol, cocked it and pointed it in his brother's direction. Defendant then testified that his brother pushed him and the gun went off, killing him.

This case is similar to the facts in Riddick. In Riddick, our Supreme Court determined that an instruction on accident was not warranted. The Court explained that:

The evidence is thus undisputed that the defendant sought out the victim, that the defendant intentionally confronted the victim with a loaded firearm, that the defendant assaulted the victim, and that the gun was in the defendant's hand when two bullets, one of which entered the victim's body, were fired from it. "The fact that the defendant claims now that he did not intend the shooting does not cleanse him of culpability and thus give rise to a defense of accident." Id. at 343, 457 S.E.2d at 731 (quoting State v. Lytton, 319 N.C. 422, 426, 355 S.E.2d 485, 487 (1987)).

As in Riddick, "the evidence clearly showed that the defendant voluntarily created the volatile situation which resulted in the victim's death." Id. He instigated the confrontation with his brother, and pulled out a loaded gun and pointed it at him. Thus, we conclude an instruction on accident was

not warranted. Accordingly, we find no error.

No error.

Judges WALKER and THOMAS concur.

Report per Rule 30(e).