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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-903

Filed: 5 July 2017

Sampson County, Nos. 14 CRS 052713, 052714

STATE OF NORTH CAROLINA

v.

ERICK TURRON OATES

Appeal by defendant, by writ of certiorari, from judgments entered 17 March 2016 by Judge W. Douglas Parsons in Sampson County Superior Court. Heard in the Court of Appeals 22 February 2017.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Anne J. Brown, for the State.*

*Charns & Donovan, by M. Alexander Charns, for defendant-appellant.*

CALABRIA, Judge.

Erick Turrón Oates (“defendant”) appeals, by writ of certiorari, from judgments entered upon jury verdicts finding him guilty of possession of a weapon of mass death and destruction and possession of a firearm by a felon. After careful review, we conclude that defendant received a fair trial, free from error.

**I. Background**

On 30 August 2014, defendant lived with his girlfriend, Mary Hooks Howard (“Mary”), at her home in Roseboro, North Carolina. At approximately 1:00 p.m., Mary called Donald Ray Hooks (“Donald”), her brother and next-door neighbor, and told him that defendant was coming over “to do something to the house.” According to Donald, Mary sounded “worried” on the phone that afternoon.

A few hours later, defendant arrived at Donald’s back door wearing a blood-spattered shirt. Defendant said, “Mary just shot herself. We need some help.” Donald went to Mary’s house and entered through the front door. He saw Mary sitting on her knees at the edge of the hallway, near the back door. A sawed-off shotgun with a 17-inch barrel was laying on the floor approximately “[s]ix to seven feet away” from her. Mary had sustained a gunshot wound to her upper right temple, and Donald saw that “part of her skull was gone.” Mary could not speak, but she was alive. Donald stepped outside and dialed 911.

Mary was “bleeding quite excessively” in the hallway when Sampson County Sheriff’s Deputy Patrick Foreman (“Deputy Foreman”) arrived at approximately 3:55 p.m. Paramedics needed to determine what type of round had caused Mary’s injury, so Deputy Foreman retrieved a sawed-off shotgun that he observed laying on the porch just outside of the back door. But when Deputy Foreman opened the weapon’s breech to eject the spent shell, he discovered that the gun was empty. Shortly thereafter, a spent 12-gauge shotgun shell casing was found on the floor of a bedroom

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at the back of the house. However, there was no blood trail leading from the back bedroom to Mary's location in the hallway.

Defendant told Deputy Foreman that he and Mary had argued the previous day and again that afternoon before the shooting. Defendant said that Mary had asked him whether he was going to leave, and he exited through the front door as she moved toward the back of the house. As he was leaving, he heard a "boom" inside of the residence. When he reentered the house and saw "what happened," he kicked the shotgun out of the back door and onto the porch.

Defendant was arrested and, on 14 September 2015, indicted by a grand jury in Sampson County Superior Court for (1) attempted first-degree murder; (2) assault with a deadly weapon with intent to kill inflicting serious injury ("AWDWIKISI"); (3) possession of a weapon of mass death and destruction; and (4) possession of a firearm by a felon. At trial, Mary testified as a witness for the State. According to Mary, she did not shoot herself on 30 August 2014. At the close of the State's case, defendant made a general motion to dismiss all charges for insufficient evidence. Defendant did not present evidence, but he renewed his motion to dismiss at the close of all of the evidence. The trial court denied both motions.

On 17 March 2016, the jury returned verdicts finding defendant not guilty of attempted first-degree murder and AWDWIKISI, but guilty of possession of a weapon of mass death and destruction and possession of a firearm by a felon. The trial court

sentenced defendant to 25 to 39 months in the custody of the North Carolina Division of Adult Correction for possession of a weapon of mass death and destruction, followed by a 19 to 32-month sentence for possession of a firearm by a felon.

On 23 March 2016, defendant filed with the trial court a *pro se*, handwritten letter requesting an appeal. However, defendant's letter did not include a certificate of service, and the State avers that service did not occur, in violation of N.C.R. App. P. 4. Despite these defects in defendant's notice of appeal, on 12 October 2016, defendant filed with this Court a petition for writ of certiorari requesting review of the trial court's judgments. In our discretion, we allow defendant's petition and proceed to the merits of his appeal. *See* N.C.R. App. P. 21(a)(1).

## **II. Analysis**

Defendant argues that the trial court erroneously denied his motion to dismiss the charges of (1) possession of a weapon of mass death and destruction and (2) possession of a firearm by a felon, because the State presented insufficient evidence that he "possessed the shotgun for an unlawful purpose." We disagree.

We review the trial court's denial of a defendant's motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). Upon a defendant's motion to dismiss, the question "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 defendant's being the perpetrator of such offense. If so, the motion is properly

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denied.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation and quotation marks omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

In North Carolina, it is “unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction . . . .” N.C. Gen. Stat. § 14-415.1(a) (2015). It is also unlawful for any person, regardless of felon status, “to manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire any weapon of mass death and destruction.” N.C. Gen. Stat. § 14-288.8(a). For purposes of both statutes, “any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches” is a “weapon of mass death and destruction.” N.C. Gen. Stat. § 14-288.8(c)(3).

Here, defendant does not dispute that (1) on 30 August 2014, he was a convicted felon; and (2) the 17-inch sawed-off shotgun was, as a matter of law, a

weapon of mass death and destruction within the meaning of N.C. Gen. Stat. §§ 14-288.8(a) and 14-415.1(a). On appeal, defendant only challenges the State's evidence of possession. Significantly, however, he does not argue that there was insufficient evidence to send the charges to the jury. Instead, defendant contends that, because possession is inherently an element of attempted first-degree murder and AWDWIKISI, the jury's verdicts finding him not guilty of those charges necessarily indicate that "there was no substantial evidence that [he] possessed the shotgun for an unlawful purpose." Alternatively, defendant asserts that the jury "must have found that the shooting was accidental and 'during the course of lawful conduct' "; therefore, the doctrines of collateral estoppel and res judicata bar his convictions on the remaining weapon possession charges.

Irrespective of defendant's assertions, these alleged errors clearly do not pertain to the trial court's denial of defendant's motion to dismiss. Indeed, the jury rendered its verdicts well after the court twice denied defendant's motion to dismiss all charges. Accordingly, defendant could not possibly have requested or obtained a ruling on these particular grounds; therefore, these arguments are waived. *See* N.C.R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make . . . ."). Furthermore, while defendant suggests that legal principles such as collateral

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estoppel and res judicata are “applicable by analogy” to the issue on appeal, this argument entirely ignores our standard of review of a trial court’s denial of a criminal defendant’s motion to dismiss. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455; *Rose*, 339 N.C. at 192, 451 S.E.2d at 223.

Defendant raises no true, reviewable challenge to the sufficiency of the State’s evidence that he unlawfully possessed the shotgun that was used to shoot Mary on 30 August 2014. Consequently, our analysis is complete.

NO ERROR.

Judge BERGER concurs.

Judge HUNTER concurs in the result.

Report per Rule 30(e).