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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-330

Filed: 21 November 2017

Cumberland County, No. 15 CRS 63040

STATE OF NORTH CAROLINA

v.

ANTONIO RASHEED HAIR

Appeal by Defendant from judgment entered 26 October 2016 by Judge Thomas H. Lock in Superior Court, Cumberland County. Heard in the Court of Appeals 26 October 2017.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Matthew Tulchin, for the State.*

*Meghan Adelle Jones for Defendant-Appellant.*

McGEE, Chief Judge.

Antonio Rasheed Hair (“Defendant”) appeals from judgment entered on a jury verdict finding him guilty of felony possession of a firearm by a convicted felon. He contends the trial court erred by denying his motion to dismiss for insufficient evidence. Because we find that the State presented substantial evidence to establish all of the elements of the offense, we hold the court did not commit error.

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A certified copy of a judgment showing Defendant was convicted on 13 May 2015 of the felony of conspiracy to commit robbery with a dangerous weapon was admitted into evidence. Defendant does not contest the validity of this evidence.

In addition, the State's evidence tends to show that, at approximately 7:47 a.m. on 11 October 2015, Deputy Richard Hallberg ("Deputy Hallberg") of the Cumberland County Sheriff's Office received a dispatch to report to a residence at 2279 Sharon Street in Fayetteville to investigate a reported gunshot wound. When Deputy Hallberg arrived at the scene, he saw Defendant standing with another man next to a Suzuki Forenza ("the Suzuki"). Deputy Hallberg noticed that Defendant had blood on his pants' leg. He asked Defendant what happened, and Defendant stated he had accidentally shot himself. Deputy Hallberg asked Defendant for the gun, and Defendant responded that he had thrown it out of the window of the Suzuki while driving on Cumberland Road near Locklear's Games and Snacks ("the store"). Upon further questioning, Defendant said he "was dropping his friend off and it was near the store. He went to get out of the car. The gun went off and then" he threw it out of the Suzuki's window. Deputy Hallberg and other law enforcement officers searched the area where Defendant stated he had thrown the gun, but did not find one.

Detective Brandon Loudermilk ("Detective Loudermilk") of the Cumberland County Sheriff's Office arrived at the scene at 8:32 a.m., after Defendant had already been transported to the hospital. Detective Loudermilk checked the registration

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plate on the Suzuki, and determined Defendant owned the vehicle. He also observed several areas of blood on the driver's seat, but did not find any bullet holes in the vehicle. Detective Loudermilk then traveled to the emergency room at Cape Fear Medical Center, arriving at approximately 8:55 a.m.

While at the hospital, Detective Loudermilk questioned Defendant, who "was less than cooperative on all the information." Defendant's statement was recorded on an audio device, and was played for the jury. Detective Loudermilk also observed what looked like a gunshot wound in Defendant's leg. Defendant told Detective Loudermilk that he had just "gotten his gun back" from some friends that morning, but Defendant would not identify the friends. Defendant stated that, as he was driving by the store, he pulled the trigger of the gun in order to check whether the safety was on, and the gun fired, striking him in the leg. Defendant stated the gun was his, and was a Hi-Point nine-millimeter with an extended magazine clip. Defendant told Detective Loudermilk that, after shooting himself, he tried to exit his vehicle, but could not and he accidentally dropped the gun on the ground. Defendant then drove alone to his friend's house at 2279 Sharon Street for assistance. Defendant did not give Detective Loudermilk any specific information concerning "where the gun was physically located at that time."

Jonathan Griner ("Griner"), a crime scene investigator with the Cumberland County Sheriff's Office, also went to the crime scene and to the hospital. He saw

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what appeared to be blood on the driver's seat of the Suzuki, but did not find any "entry points" into the vehicle or other relevant evidence in the vicinity. While Griner was at the hospital, he collected an orange biohazard bag containing a projectile that had been recovered from the stretcher on which Defendant had been transported. Griner also took photographs of Defendant's injuries, which were consistent with Defendant having accidentally shot himself in his right thigh.

Jordan Cole, one of the nurses who cared for Defendant while he was in the emergency room, also testified that Defendant told her he had accidentally shot himself in his right thigh. Renee Taylor, the nurse in charge of the unit testified that a bullet was first noticed in an x-ray of Defendant's injured leg, and was subsequently recovered from the bedsheet of the stretcher on which Defendant arrived at the hospital. That bullet was placed in a biohazard bag and handed over to the Sheriff's Office.

After the court denied Defendant's motion to dismiss at the close of the State's evidence, Defendant testified that, on the morning in question, he was driving his vehicle in the area of the store, and was stopped at a stop sign when a man approached his vehicle and asked for a cigarette lighter. Defendant gave the man a lighter but, as the man returned it, the man pointed a gun at him and demanded money. The man shot Defendant, who then sped away. Defendant's leg went numb

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and he drove to his friend's house off Sharon Street. Defendant stated he did not report to the police that he had been shot by this person because of fear of retaliation.

The trial court denied Defendant's motion to dismiss at the close of all the evidence. The jury returned a verdict finding Defendant guilty of possession of a firearm by a convicted felon. The trial court sentenced Defendant on 26 October 2016 to active imprisonment for a minimum of eleven months and a maximum of twenty-three months.

Defendant filed written notice of appeal on 16 November 2016. Acknowledging that the notice of appeal failed to identify this Court as the court to which appeal was taken and did not contain a certificate of service, Defendant filed a petition for writ of *certiorari* after filing the record on appeal in this Court. The petition was referred to this panel for decision. Assuming, *arguendo*, that the defects are jurisdictional, we allow Defendant's petition and review the denial of Defendant's motion to dismiss.

To withstand Defendant's motion to dismiss the charge of possession of a firearm by a convicted felon, the State must have presented substantial evidence that Defendant possessed a firearm after having been convicted of a felony. *State v. Cox*, 367 N.C. 147, 151, 749 S.E.2d 271, 275 (2013). Further:

“Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” “The evidence is to be considered in the light most favorable to the State, and the State is entitled to . . . every reasonable inference to be drawn therefrom.” “Whether the State presented substantial evidence of each

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essential element is a question of law.” . . . . Accordingly, we conduct a *de novo* review to determine whether there was substantial evidence that defendant was previously convicted of a felony and subsequently possessed a firearm.

*Id.* at 150–51, 749 S.E.2d at 274–75 (citations omitted). Defendant does not dispute that he had a felony record on the date the shooting occurred, so we only address whether the State presented substantial evidence that Defendant possessed a firearm on the morning of 11 October 2015.

Defendant contends that his confession to accidentally shooting himself was insufficient, standing alone under the *corpus delicti* rule, to prove that he possessed a firearm.

The *corpus delicti* rule is historically grounded in three policy justifications: (1) to “protect[ ] against those shocking situations in which alleged murder victims turn up alive after their accused killer has been convicted and perhaps executed”; (2) to “ensure[ ] that confessions that are erroneously reported or construed, involuntarily made, mistaken as to law or fact, or falsely volunteered by an insane or mentally disturbed individual cannot be used to falsely convict a defendant”; and (3) “to promote good law enforcement practices [by] requir[ing] thorough investigations of alleged crimes to ensure that justice is achieved and the innocent are vindicated.”

Traditionally, our *corpus delicti* rule has required the State to present corroborative evidence, independent of the defendant’s confession, tending to show that “(a) the injury or harm constituting the crime occurred [and] (b) this injury or harm was done in a criminal manner.” This traditional approach requires that the independent evidence “touch[ ] or concern[ ] the *corpus delicti*” – literally, the body of the crime, such as the dead body in a

murder case.

*Id.* at 151, 749 S.E.2d at 275 (citations omitted). However, there are now two methods to satisfy the *corpus delicti* rule, the traditional method and “the *Parker* rule, [which] applies when independent proof of the commission of the crime – that is, the *corpus delicti* – is lacking but there is substantial independent evidence tending to establish the trustworthiness of the defendant’s extrajudicial confession.” *Id.* at 152, 749 S.E.2d at 276 (citation omitted). On the present facts, we apply the *Parker* rule, and must therefore “determine whether defendant’s ‘confession is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show [he] had the opportunity to commit the crime.’” *Id.* at 153, 749 S.E.2d at 276 (citation omitted).

Defendant contends that his confessions have not been sufficiently corroborated to satisfy the *corpus delicti* rule because no firearm was found, and no witness testified to having seen Defendant in possession of a firearm. We disagree. Although no gun was ever recovered, Defendant sustained a gunshot wound to his leg. The bullet entered the top of Defendant’s right thigh and exited on the back, inner side of Defendant’s right thigh. A single bullet was found on the sheet of the stretcher on which Defendant was transported to the hospital. Defendant’s gunshot wound was ample proof that a firearm was in the vicinity of Defendant at the time in question. Detective Loudermilk observed blood only on the driver’s seat of the

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Suzuki, and he did not find any evidence of bullet holes in the Suzuki that suggested Defendant had been shot from outside the vehicle. Whether these facts could be consistent with Defendant's narrative of events is irrelevant. *Id.* at 150-51, 749 S.E.2d 271, 274-75. In *Cox*, after approaching a vehicle from which the driver had fled, an officer

observed that defendant was one of three remaining passengers in the car. Officers thereafter found the firearm in question within ten to twelve feet of the driver's open door. Even though the night was cool and the grass was wet with condensation, the firearm was dry and warm, indicating that it came from inside the car.

*Id.* at 153, 749 S.E.2d at 276. The defendant later admitted the firearm was his, and he was tried for possession of a firearm by a felon. Our Supreme Court reasoned:

*Although the gun recovered by the officers may have provided independent evidence of the tangible corpus delicti under the traditional rule, in light of the above considerations, we apply the Parker rule. Accordingly, we must determine whether defendant's "confession is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show [he] had the opportunity to commit the crime."*

*Id.* (citation omitted) (emphasis added).<sup>1</sup> The Court held that the evidence was sufficient to satisfy the *Parker* rule and establish the trustworthiness of defendant's confession.

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<sup>1</sup> Our Supreme Court suggested that the presence of the gun might have been sufficient to satisfy the traditional rule, but it decided to apply the *Parker* rule, as either method of proof was acceptable. We apply the *Parker* rule, and therefore do not address whether the presence of the

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In line with *Cox*, Defendant states in his brief that “[e]vidence corroborating the extrajudicial confession could consist of an officer discovering a gun at or near where the confession indicated a gun would be[.]” The presence of a gunshot wound in Defendant is at least as corroborative of Defendant’s confession as would have been the recovery of a gun.<sup>2</sup> While it is true that Defendant *could* have been shot by someone else, it is also true, for example, that the gun recovered in *Cox* could have belonged to the driver who fled the scene, and not the defendant in that case. However, we do not consider the evidence in the light most favorable to Defendant, we determine whether there was substantial independent evidence – “relevant evidence that a reasonable mind might accept as adequate to support a conclusion” – supporting the trustworthiness of Defendant’s confessions. *Id.* at 150, 153, 749 S.E.2d at 274, 276 (citations omitted).

We hold that the State presented substantial independent evidence in support of the trustworthiness of Defendant’s multiple confessions, and further hold that the State presented substantial evidence in support of Defendant’s charge of possession of a firearm by a felon. We therefore hold the trial court properly denied Defendant’s motion to dismiss.

NO ERROR.

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gunshot wound and the bullet, which prove the presence and use of a gun, would have been sufficient to satisfy the traditional rule.

<sup>2</sup> A gun like the one recovered in *Cox*, which included no physical evidence such as fingerprints, directly linking it to prior possession by the defendant.

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Judges STROUD and DILLON concur.

Report per Rule 30(e).