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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-505

Filed: 6 February 2018

Wake County, No. 02CRS053666, 08CRS081625, 08CRS081626

STATE OF NORTH CAROLINA

v.

JOSE FRANCISCO MARTINEZ, Defendant.

Appeal by Defendant from judgments entered 18 November 2015 by Judge Henry W. Hight, Jr., in Wake County Superior Court. Heard in the Court of Appeals 12 December 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General John R. Green, Jr., for the State.

Richard J. Costanza for the Defendant.

DILLON, Judge.

Jose Francisco Martinez ("Defendant") appeals from judgment entered upon a jury verdict finding him guilty of first-degree murder, discharging a weapon into an occupied dwelling, and assault with a deadly weapon with intent to kill inflicting serious injury ("AWDWIKISI"). For the following reasons, we find no prejudicial error.

I. Background

In 2002, a shooting occurred at a trailer park located near Hillsborough Street in Raleigh. The shooting caused the death of one man, Carlos Gomez, and resulted in severe injury to another man, Vadal Omeada. Although witnesses immediately identified Defendant as the shooter, the police were not able to locate Defendant.

Several years later, in 2008, Defendant was located in a Texas prison where he was serving time for a different crime. He was extradited to North Carolina in order to stand trial for the 2002 shooting.

At trial, the State's evidence tended to show the following: Defendant was a resident of the trailer park in 2002. At 10:00 PM on 19 June 2002, Defendant fired a weapon multiple times. At least one of the bullets pierced the wall of a nearby trailer and struck Mr. Gomez while he was lying in his bed. Mr. Gomez later died at the hospital as a result of the bullet wound. Defendant also shot Mr. Omeada three times as Mr. Omeada stood outside his trailer. Mr. Omeada spent forty (40) days in the hospital recovering from his injuries. Several other residents of the trailer park identified Defendant as the shooter at trial.

The day after the shooting, Defendant returned to the trailer park, stating that he was there to "finish [Mr. Omeada] off." After a resident told Defendant she was going to call the police, Defendant "ran off." The resident contacted the police but they were unable to locate Defendant.

A jury found Defendant guilty of several crimes in relation to the incident, and Defendant was sentenced accordingly. Defendant has filed a petition for writ of *certiorari* with our Court seeking review, recognizing a potential defect in his notice of appeal. In our discretion, we allow Defendant's petition and address the merits of his appeal. *See* N.C. R. App. P. 21.

II. Analysis

On appeal, Defendant contends that the trial court erred by (1) allowing certain hearsay testimony, (2) instructing the jury on the flight doctrine, and (3) allowing a detective to testify regarding the consistency of other witness testimony. We will address each argument in turn.

A. Hearsay Testimony

Defendant first alleges error in the trial court's decision to permit a City-County Bureau of Investigation agent, in response to the prosecutor's question regarding his reason for entering Defendant's lot, to testify that "[i]nformation was given to [him] by detectives on the scene that the . . . [Defendant] may have lived [there]." Defendant's counsel objected during the agent's answer but did not specify a basis for the objection. The trial court immediately overruled the objection, and the agent proceeded to state that he entered Defendant's trailer and discovered shell casings which were of the same caliber as the shell casings discovered near the area where Defendant was seen firing his weapon.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *State v. Holden*, 321 N.C. 125, 142, 362 S.E.2d 513, 524 (1987); *see also* N.C. Gen. Stat. § 8C-1, Rule 801 (2015). Generally, hearsay statements are inadmissible as evidence, *see* N.C. Gen. Stat. § 8C-1, Rule 801(c); however, our General Statutes allow certain hearsay statements to be admitted if they fall within certain recognized exceptions. *See* N.C. Gen. Stat. § 8C-1, Rules 803 and 804. Our Supreme Court has consistently held that statements which are offered to explain a person's subsequent conduct are *not* hearsay. *See State v. Maynard*, 311 N.C. 1, 16, 316 S.E.2d 197, 205 (1984) ("[T]he statements of one person to another are admissible [as non-hearsay] to explain the subsequent conduct of the person to whom the statement was made."); *see also Holden*, 321 N.C. at 142, 362 S.E.2d at 525 (concluding that an officer's statement that he "received information from [a person] . . . [t]hat the victim had been shot" was not hearsay when offered to explain the officer's decision to return with a search warrant to seize the weapon used in the shooting).

Here, the agent's statement that he had been told which trailer belonged to Defendant was offered to explain the agent's subsequent search of Defendant's trailer, which was authorized by a warrant. There is no indication that Defendant challenged the credibility or reliability of the information provided by "detectives on the scene," which presumably provided the basis for the search warrant. In addition,

our Supreme Court has held that a valid search warrant may be based on hearsay information. *See State v. Vestal*, 278 N.C. 561, 576-77, 180 S.E.2d 755, 756-66 (1971).

Defendant argues for the first time on appeal that this statement was the only evidence that Defendant actually lived in any particular trailer in the trailer park. Because we conclude that this statement was not improperly admitted, we find no error in the trial court's decision to overrule Defendant's objection.

B. Flight Instruction

Defendant also argues that the trial court erred by instructing the jury on the flight doctrine. Specifically, Defendant contends that the evidence presented at trial only showed that Defendant left the crime scene, not that he "fled." We disagree.

A trial court's "choice of instructions is a matter within the trial court's discretion and will not be overturned absent a showing of abuse of discretion." *State v. Nicholson*, 355 N.C. 1, 66, 558 S.E.2d 109, 152 (2002).

A flight instruction is proper where "some evidence in the record reasonably supports the theory that defendant fled after commission of the crime charged." *State v. Grooms*, 353 N.C. 50, 80, 540 S.E.2d 713, 732 (2000) (internal marks and citation omitted). Ultimately, "[t]he relevant inquiry is whether the evidence shows that defendant left the scene of the crime and took steps to avoid apprehension." *Id.*

Here, a witness testified that Defendant was "shooting" and then left the scene immediately afterward. Our Supreme Court has previously held that evidence was

sufficient to support a flight instruction where the defendant "immediately entered his car and quickly drove away from the crime scene without rendering any assistance to the victims or seeking to obtain medical aid for them." *State v. Anthony*, 354 N.C. 372, 425, 555 S.E.2d 557, 591 (2001). Further, there was testimony that after returning to the scene the next day, Defendant "ran off" when another resident told him that she was going to call the police. This testimony suggests that Defendant left the scene of the crime in response to the woman's threat to call the police in order to avoid apprehension. These testimonies are "some evidence" which reasonably supports a theory that Defendant fled in order to avoid apprehension. *See Nicholson*, 355 N.C. at 66, 558 S.E.2d at 152; *Grooms*, 353 N.C. at 80, 540 S.E.2d at 732. Indeed, where there is some evidence supporting the theory that Defendant fled, "the jury must decide whether the facts and circumstances support the State's contention that the defendant fled." *State v. Norwood*, 344 N.C. 511, 535, 476 S.E.2d 349, 360 (1996). Accordingly, we conclude that the trial court did not abuse its discretion when it instructed the jury on the flight doctrine.

C. Detective's Testimony

Finally, Defendant contends that the trial court improperly allowed a detective to offer his opinion that testimony from the State's witnesses at trial was consistent with what the witnesses told him before trial. Defendant objected to several of these statements at trial, but again failed to specify a basis for his objection.

We note that, as a general rule, "inconsistencies in a witness's testimony or pretrial statements are for the jury to determine as fact finders." *State v. Ramey*, 318 N.C. 457, 467, 349 S.E.2d 566, 573 (1986) (noting that "it would have been proper . . . for [the detective] to testify as to the statements made to her by the victim and let the jury determine whether they were inconsistent"). However, even overlooking Defendant's failure to state an objection with appropriate specificity, and assuming *arguendo* that this testimony was error, we conclude that such error was harmless in light of the considerable evidence of Defendant's guilt. We do not believe that there is "a reasonable possibility that, had the error in question not been committed, a different result would have been reached at [] trial[.]" N.C. Gen. Stat. § 15A-1443 (2015); *see also State v. Williams*, 322 N.C. 452, 456, 368 S.E.2d 624, 627 (1988).

NO PREJUDICIAL ERROR.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).