An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1236

Filed: 19 June 2018

Wake County, Nos. 16 CRS 217819-22

STATE OF NORTH CAROLINA

v.

JERRY LEWIS TEKIMEAM BIAS, JR.

Appeal by defendant from judgments entered 15 June 2017 by Judge James K. Roberson in Wake County Superior Court. Heard in the Court of Appeals 18 June 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Terence D. Friedman, for the State.

Edward Eldred, Attorney at Law, PLLC, by Edward Eldred, for defendant-appellant.

CALABRIA, Judge.

Jerry Lewis Tekimeam Bias, Jr. ("defendant") appeals from judgments entered upon his convictions of three counts of robbery with a dangerous weapon and one count of possession of a firearm by a felon. Defendant contends that the trial court erred in denying his motion to dismiss. After careful review, we find no error.

I. Factual and Procedural Background

On 12 December 2016, defendant was indicted for three counts of robbery with a dangerous weapon and one count of possession of a firearm by a convicted felon. A superseding indictment was issued on 15 May 2017 on the possession of a firearm charge, alleging that defendant had possessed both a shotgun and a handgun on the offense date.

Defendant was tried at the 12 June 2017 criminal session of Wake County Superior Court, the Honorable James K. Roberson presiding. The State's evidence tended to show that Hailey Mullins ("Mullins") had been communicating via Snapchat with a man she knew as Lawrence Lamont ("Lamont"). Mullins' boyfriend, Kyle Britt ("Britt"), became upset after learning that Lamont was making advances toward Mullins via Snapchat. On the evening of 5 September 2016, Britt and Mullins were at Mullins' house in Holly Springs, North Carolina when they made a plan to rob Lamont. Mullins contacted Lamont through Snapchat and requested to purchase two ounces of marijuana from him for $450.00. Britt and Mullins planned to give Lamont a sum less than $450.00, and if Lamont refused to accept it, they agreed they would just take the marijuana.

Britt called his friends, James Jordan ("Jordan") and Derrick Daniel ("Daniel"), and informed them about their plan. Jordan and Daniel agreed to participate. Around 11:00 p.m., Britt and Mullins left Holly Springs in a Toyota belonging to a friend of Mullins' mother. They picked up Jordan and Daniel, and the four friends

headed towards Raleigh, North Carolina. None of them had any firearms or weapons. Following Lamont's instructions, the four friends initially headed towards Haverty Drive in Raleigh. As they approached the Haverty Drive area around midnight, Lamont contacted Mullins and told her to meet him on a nearby dirt road.

Once the four friends reached the dirt road, they saw a man ("the first man") with a backpack on his shoulder. Mullins believed the first man was Lamont. Daniel had previously met Lamont and recognized the first man as Lamont. Britt, Jordan, and Daniel exited the car. The first man started backing up and another individual ("the second man") emerged from the woods holding a shotgun. The second man was wearing a yellow shirt, black hoodie, and a white skeleton mask that covered his face. Mullins identified defendant as the second man, "the guy with the mask." Although she never saw his face, she testified that his hoodie came off and she was able to see his hair. She testified that "he has the hair. He has the dreads."

The second man held a shotgun to Britt's head and demanded that the four friends get behind the car. The second man then held the shotgun to Mullins' head and demanded cell phones and money. The second man took money from Britt and Mullins and a silver chain necklace from Daniel. As everyone was standing behind the car, the second man again demanded that everyone hand over their cell phones. Mullins stated that they did not have any cell phones, and the first man punched her in the face.

Jordan and Daniel began fighting the first man while Britt started fighting the second man. Mullins attempted to assist Britt by hitting the second man in the head. She had a ring on her hand and noticed that the second man was bleeding from the side of his head. Jordan and Daniel joined in on the struggle against the second man. One to three shots were fired from the shotgun. The first man then ran away from the scene. Eventually, Jordan and Daniel were able to grab the shotgun from the second man and throw it into the woods. Britt continued to wrestle with the second man until the second man fell into a wooden fence, knocking it down. All four friends began running towards the car when the second man pulled out a pistol and shot towards them. He shot the pistol two to five times before it jammed. He then "pistol whipped" Mullins with it and ran from the scene. The four friends entered their vehicle and drove away but were stopped by law enforcement officers with the Raleigh Police Department ("RPD") three to five minutes later.

At 12:17 a.m. on 5 September 2016, someone called 911 from 4333 Haverty Drive ("the residence") in Raleigh, North Carolina to report that shots had been fired. On the way to the residence, RPD officers learned from a dispatcher that an "old, gray Toyota" was spotted leaving the scene of the crime. Five to six minutes after the 911 call was made, the officers stopped a vehicle matching the description of the suspect vehicle near Rock Quarry and Dutchman Road. Britt, Mullins, Jordan, and Daniel

were riding in that vehicle. The officers did not recover any firearms or contraband from them.

Four to five minutes after the four friends had been stopped, officers arrived at the residence. Defendant was lying on the floor, upset and holding a towel to his forehead. Defendant was bleeding from an abrasion on his forehead. When officers questioned defendant at his home, defendant initially claimed that he had been alone, walking up a hill near his home, when he "heard a gunshot and took off running." Defendant stated, "I don't know who they were, but you can bet that I'm going to pop them, and that ain't no joke."

Defendant was taken to a hospital and treated for the injury he sustained to his head. While he was at the hospital, defendant was interviewed by police officers. Defendant claimed that he was walking alone on a dirt road when three black males and one white female exited their vehicle and assaulted him, causing injury to his forehead. Defendant indicated that he wrestled a gun away from one of the four, fired one round, and missed. The gun malfunctioned and defendant threw it to the side of the road. He ran to the residence and called 911. Defendant told officers that the alleged assailants took money and a chain from him. Defendant was unable to indicate the amount of money taken or to describe the chain. Defendant denied having a shotgun at the scene.

Officers confirmed that behind the residence, there was a hill that led to a dirt path. The dirt path led to Pearl Road near Grandover Drive. On Pearl Road, officers observed blood droplets on the ground and located a bloody pistol that had no magazine. It was evident that the pistol had been recently fired and had jammed. Officers also recovered four shell casings from a pistol, unspent shotgun shells, a silver chain, a black glove, and $50.00 on the dirt path. Parallel to Pearl Road, an officer observed that a panel from a privacy fence had been knocked down and found a shotgun in the front yard of a nearby home.

Defendant moved to dismiss all the charges at the close of the State's evidence and at the close of all the evidence, and the trial court denied both motions. On 15 June 2017, a jury returned verdicts finding defendant guilty of all charges. The trial court consolidated the robbery convictions and sentenced defendant to 73 to 100 months in the custody of the North Carolina Department of Adult Correction. The trial court also imposed a consecutive sentence of 12 to 24 months' imprisonment for the possession of a firearm by a felon conviction. Defendant appeals.

II. Motion to Dismiss

Defendant's sole argument on appeal is that the trial court erred in denying his motion to dismiss because there was insufficient evidence that defendant was the perpetrator, or the second man with the shotgun. Defendant relies on *State v.*

Hayden, 212 N.C. App 482, 711 S.E.2d 492, *disc. review denied*, 365 N.C. 349, 717 S.E.2d 737 (2011) for his contention.

A. Standard of Review

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "In its analysis, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Bradshaw*, 366 N.C. 90, 93, 728 S.E.2d 345, 347 (2012) (citation and quotation marks omitted). "Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781, *cert. denied*, 537 U.S. 1005, 154 L. Ed. 2d 403 (2002). The evidence should be viewed "in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Bullock*, 178 N.C. App. 460, 466, 631 S.E.2d 868, 873 (2006), *disc. review denied*, 361 N.C. 222, 642 S.E.2d 708 (2007).

"Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Fritsch*, 351 N.C 373, 379, 526 S.E.2d 451, 455, *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000) (citations and quotation marks omitted).

> When the evidence establishing the defendant as the perpetrator of the crime is circumstantial, courts often

> [look to] proof of motive, opportunity, capability, and identity to determine whether a reasonable inference of defendant's guilt may be inferred or whether there is merely a suspicion that the defendant is the perpetrator. . . . [E]vidence of either motive or opportunity alone is insufficient to carry a case to the jury.

Hayden, 212 N.C. App. at 485, 711 S.E.2d at 494-95 (citations and quotation marks omitted).

B. Analysis

In *Hayden*, the victim was found lying on the side of the road, beside his still-running vehicle. He had died from a gunshot wound to the head. *Id.* at 483, 711 S.E.2d at 493. This Court held that because the defendant and victim had a history of hostility between them involving physical violence and threats, there was sufficient evidence from which a rational juror could conclude the existence of a motive to kill the victim. *Id.* at 486-87, 711 S.E.2d at 495-96. However, the only evidence as to the defendant's opportunity to commit the crime was that he was "briefly in a spot two miles away from the scene of the crime." *Id.* at 489, 711 S.E.2d at 497. In addition, the State's evidence of the defendant's means to commit the murder consisted only of three statements made to an acquaintance and neighbor where the defendant boasted of stealing an M16 from the military and an investigator's testimony that it was possible to steal a weapon from the military. *Id.* at 493, 711 S.E.2d at 499. The State failed to present evidence that anyone had actually seen the defendant in possession of an M16, that an M16 fired the type of shell casing found at the crime scene, or that

an M16 was in fact the murder weapon. *Id.* This Court held that because the State did not present sufficient evidence that the defendant had either the opportunity or means to commit the murder, the trial court erred by denying the defendant's motion to dismiss. *Id.* at 493-94, 711 S.E.2d at 500.

Hayden is distinguishable from this case. In the instant case, the State presented evidence that defendant's motive was to rob the four friends of their money, jewelry, and cell phones. As to opportunity, defendant's own statements, as well as testimony from the four friends, placed defendant at the scene of the crime, at the time the crime was committed. *See Hayden*, 212 N.C. App. at 488, 711 S.E.2d at 497 (stating that to establish opportunity, "the State must have presented at trial evidence not only placing the defendant at the scene of the crime, but placing him there at the time the crime was committed"). In regard to whether defendant had the means to commit robbery with a dangerous weapon and possession of a shotgun and pistol, defendant admitted to officers that he shot a pistol at the four friends and the four friends testified that it was the second man who robbed them with the shotgun and then shot a pistol at them. Most notably, in contrast to *Hayden*, in which there was no witness to the victim's murder, Mullins specifically identified defendant as the second man. We hold that, viewing the evidence in the light most favorable to the State, there was sufficient evidence of defendant's motive, opportunity, means,

and identity to survive a motion to dismiss and to present the case to the jury. Accordingly, the trial court did not err in denying defendant's motion to dismiss.

NO ERROR.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).