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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1211

Filed: 3 December 2019

Warren County, Nos. 15 CRS 50470-72

STATE OF NORTH CAROLINA

v.

KADEEM JALEEL GROOMS

Appeal by defendant from judgments entered 3 May 2018 by Judge Henry W. Hight, Jr., in Warren County Superior Court. Heard in the Court of Appeals 5 September 2019.

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

Kimberly P. Hoppin for defendant-appellant.

ZACHARY, Judge.

Defendant Kadeem Jaleel Grooms appeals from judgments entered upon jury verdicts finding him guilty of first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, five counts of attempted murder, and two counts of discharging a firearm into an occupied vehicle. Upon review, we conclude that Defendant received a fair trial, free from error.

Background

In the early hours of 9 August 2015, Defendant and Montrell Davis were at a nightclub in Oxford, North Carolina. Around the time that the club was closing, Defendant and Montrell Davis began to "brawl" with the owner of the club. A deputy with the Warren County Sheriff's Office who was patrolling the area broke up the fight and began clearing people out of the club.

Outside, a group of men were sitting in two vehicles: a Chevrolet Tahoe and an Audi. In the Tahoe sat Jerry Henderson, Michael Presley, and two other men. In the Audi sat Jazraun Jones and Darren Harris.

Separate from those vehicles was a GMC Sierra. Marquis Davis sat in the Sierra waiting for Defendant and Montrell Davis.

Defendant exited the club, approached the Tahoe, and began to argue with Henderson. Although they had never met one another before this confrontation, no one in the Tahoe felt threatened by Defendant's presence. Defendant, Montrell Davis, and a third person, Darren Alston, eventually got into the Sierra with Marquis Davis. As the drivers of the Sierra and Tahoe prepared to exit the parking lot, someone walked in front of the Tahoe, impeding its ability to leave. Agitated, Henderson shouted out the window of the Tahoe for the person to move out of the way. The deputy was nearby, heard Henderson yelling, and instructed the Tahoe to leave. The

Tahoe circled the club, and then accelerated to pass the Sierra and enter the roadway. Marquis Davis, the driver of the Sierra, then began chasing the Tahoe.

As the Sierra caught up with the other vehicles, Defendant asked the driver to lower the windows. Brandishing a gun, Defendant positioned himself with his "buttocks . . . on the windowsill, while his torso and his arm and his head w[ere] out of the window." Hanging out of the driver's-side rear window, Defendant fired eight or nine shots from a pistol into the back of the Tahoe and Audi. Alston also fired 15 to 20 shots from an AK-47 at the Tahoe and Audi. Although Henderson was attempting to flee in the Tahoe, Marquis Davis sped ahead of the Tahoe, as Defendant and Alston continued shooting from the Sierra. One of the passengers of the Tahoe attempted to shoot at the Sierra as it passed, and one of the occupants of the Audi fired several shots at the Sierra as well. Henderson was shot three times in the back, and Presley was fatally shot in the head.

Defendant was indicted for first-degree murder, five counts of attempted murder, assault with a deadly weapon with intent to kill inflicting serious injury, and two counts of discharging a firearm into an occupied vehicle. The trial came on for hearing before the Honorable Henry W. Hight, Jr., in Warren County Superior Court.

Defendant moved to dismiss the charges for insufficient evidence at the close of the State's case-in-chief. The motion was denied. Defendant chose not to offer any

evidence and renewed his motion to dismiss, which the trial court again denied. Upon being found guilty of all charges, Defendant gave oral notice of appeal in open court.

Standard of Review

"This Court reviews the denial of a motion to dismiss *de novo*." *State v. Stroud*, 252 N.C. App. 200, 208, 797 S.E.2d 34, 41, *disc. review denied*, 369 N.C. 754, 799 S.E.2d 872 (2017). "When ruling on a defendant's motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion." *State v. Chapman*, 359 N.C. 328, 374, 611 S.E.2d 794, 827 (2005) (internal quotation marks omitted). "The terms 'more than a scintilla of evidence' and 'substantial evidence' are in reality the same and simply mean that the evidence must be existing and real[.]" *Stroud*, 252 N.C. App. at 208-09, 797 S.E.2d at 41 (quotation marks omitted).

Discussion

Defendant contends that the trial court erred in denying his motions to dismiss the charges of (1) first-degree murder, (2) assault with a deadly weapon with intent to kill inflicting serious injury, and (3) attempted murder. We address each issue in turn.

I.

Defendant first argues that the trial court erred in failing to dismiss the charge of first-degree murder because the State presented insufficient evidence as to who fired the shot that killed Presley. The trial court instructed the jury on the theory of acting in concert: "For [D]efendant to be guilty of a crime is not necessary that the defendant do all of the acts necessary to constitute the crime." Defendant asserts that "under long-standing North Carolina precedent, a defendant is not guilty of murder if the victim was killed by a third-party adversary of the defendant rather than by the defendant or an accomplice of the defendant." We disagree.

"First-degree murder is the unlawful killing of a human being committed with malice, premeditation, and deliberation." *State v. Rios*, 169 N.C. App. 270, 279, 610 S.E.2d 764, 771, *disc. review denied*, 360 N.C. 75, 623 S.E.2d 37 (2005). "Under the theory of acting in concert, one may be found guilty . . . if he is at the scene with another with whom he shares a common plan to commit the crime, although the other person does all the acts necessary to effect the commission of the crime." *State v. Perry*, 338 N.C. 457, 468, 450 S.E.2d 471, 477 (1994) (internal quotation marks omitted). Our Supreme Court has held that a defendant can be guilty of first-degree murder under the theory of acting in concert. *See, e.g.*, *id.* at 469, 450 S.E.2d at 478.

In the instant case, the State presented more than enough direct and circumstantial evidence to survive a motion to dismiss. To begin, the jury heard

eyewitness testimony that Defendant was the first to shoot at the Tahoe. Defendant made the tactical decision to place himself with his "buttocks . . . on the windowsill, while his torso and his arm and his head w[ere] out of the window." Henderson and Presley—the only two people shot—were both sitting on the side of the Tahoe closest to Defendant's position in the Sierra. Photographs of the bullet-ridden Tahoe were shown to the jury. In total, four passengers of the vehicles testified to and confirmed these events, and the deputy at the scene was able to testify to the brewing conflict at the nightclub prior to the shootings.

Ballistic evidence tended to show that "many, many rounds were fired at the [Tahoe] from the rear driver's side, all going in a trajectory that would be consistent with the victim who was sitting in the rear driver side seat being shot in the head." Noting the damage to the Tahoe, Special Agent Justine Heinrich testified that "it's surprising that anybody that was inside that vehicle could've survived because of how many bullet holes went through it." Special Agent Dawn Karie testified at length to the weapons each participant used in the shootout. Shell casings recovered along the side of the road by the patrol sergeant corroborated the special agents' testimony. Moreover, a forensic pathologist testified to finding bullet fragments in Presley's head and left hand. Numerous photographs of the autopsy and bullet wounds were shown to the jury, and the pathologist explained the contents of each photograph in turn.

In his brief to this Court, Defendant argues that he must have fired the fatal shot in order for him to be found guilty beyond a reasonable doubt of the first-degree murder of Presley. However, this assertion mistakenly conflates the applicable standard of review with the final jury determination. The State needed only to put forth such evidence that "a reasonable mind might accept as adequate to support [the] conclusion" that Defendant killed Presley. *Chapman*, 359 N.C. at 374, 611 S.E.2d at 827. Here, the State presented ample evidence that only Defendant and Alston fired shots at the Tahoe. Under the theory of acting in concert, Defendant could properly be found guilty of first-degree murder if one of Alston's bullets delivered the fatal blow to Presley, as they were acting together while shooting at the Tahoe from the Sierra. *See Perry*, 338 N.C. at 468, 450 S.E.2d at 477. Thus, under the applicable standard of review, and in light of the evidence presented to the jury, the motion to dismiss was properly denied.

II.

Defendant next argues that the trial court erred in denying his motion to dismiss the charge of assault with a deadly weapon with intent to kill inflicting serious injury. "The elements of the charge of assault with a deadly weapon with intent to kill inflicting serious injury . . . are: (1) an assault, (2) with a deadly weapon, (3) with intent to kill, (4) inflicting serious injury, (5) not resulting in death." *State v. Wampler*, 145 N.C. App. 127, 130, 549 S.E.2d 563, 566 (2001).

This portion of Defendant's appeal is essentially a carbon copy of his previous argument, and our analysis remains largely the same—the only difference being that Henderson was wounded rather than killed. Regarding this charge, the jury was presented with eyewitness testimony of Defendant's actions, accounts of the investigation from special agents and law enforcement officers, and over 100 photographs depicting the damage to the vehicles and injuries to the victims. Because a reasonable mind could conclude that Defendant was guilty of assaulting Henderson with a deadly weapon with intent to kill inflicting serious injury, Defendant's motion to dismiss was properly denied as to this offense as well.

III.

Finally, Defendant contends that the trial court erred in declining to dismiss the five counts of attempted murder. Defendant argues that because the jury was not instructed on the theory of acting in concert as to this offense, "the State had to show that [Defendant] himself specifically intended to commit murder." Defendant posits that the State did not provide sufficient evidence that he, individually, attempted to commit first-degree murder. We disagree.

"The elements of an attempt to commit any crime are: (1) the intent to commit the substantive offense, and (2) an overt act done for that purpose which goes beyond mere preparation, but (3) falls short of the completed offense." *State v. Haynesworth*, 146 N.C. App. 523, 527, 553 S.E.2d 103, 107 (2001). As specifically applied to

attempted murder, the State must establish that the defendant "(1) specifically intend[ed] to kill another person unlawfully; (2) he [committed] an overt act calculated to carry out that intent, going beyond mere preparation; (3) he act[ed] with malice, premeditation, and deliberation; and (4) he [fell] short of committing the murder." *State v. Lee*, 218 N.C. App. 42, 57, 720 S.E.2d 884, 895, *disc. review improvidently allowed*, 366 N.C. 329, 734 S.E.2d 571 (2012). To satisfy the third element, the defendant must have specifically intended to commit first-degree murder. *State v. Coble*, 351 N.C. 448, 450, 527 S.E.2d 45, 47 (2000).

Here, the jury was presented with substantial evidence to support a finding of Defendant's intent to commit first-degree murder. Prior to the shootout, Defendant had already confronted Henderson outside of the nightclub. Defendant was the first to fire his weapon after he deliberately positioned himself halfway out of the rear window of the Sierra, all while speeding down the road at around 90 to 95 miles per hour. The decision to sit in the window of a speeding vehicle and fire multiple shots at a moving car filled with occupants clearly suggests not only the specific intent to kill, but also premeditation. *See State v. Taylor*, 362 N.C. 514, 531, 669 S.E.2d 239, 256 (2008) (acknowledging that "firing multiple shots" indicates premeditation and deliberation "because some amount of time, however brief . . . must elapse between each pull of the trigger" (internal quotation marks omitted)).

Further, the evidence tended to show that Defendant intended to commit the first-degree murder of the two occupants of the Audi. During the high-speed chase, Defendant fired shots at a black car that matched the description of the Audi. This evidence was corroborated by bullet fragments that were retrieved from the Audi, as well as a defect on its roof from being grazed with bullets. Thus, a reasonable mind could conclude that Defendant acted with the specific intent to commit murder when he fired multiple shots at two separate vehicles, and that he was therefore guilty of attempted murder.

Conclusion

For the foregoing reasons, the trial court did not err in denying Defendant's motions to dismiss.

NO ERROR.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).