IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-774

No. COA22-217

Filed 15 November 2022

Caswell County, No. 15CRS299

STATE OF NORTH CAROLINA

v.

HAROLD LEE WILLIAMS, JR., Defendant.

Appeal by defendant from judgment entered 30 June 2021 by Judge Susan E. Bray in Caswell County Superior Court. Heard in the Court of Appeals 6 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Llogan R. Walters, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Candace Washington, for defendant-appellant.

GORE, Judge.

¶ 1 Defendant, Harold Lee Williams, Jr., appeals from the trial court's judgment and sentence imposed for one count of intimidating a witness. This Court has jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) as an appeal of right from a final judgment entered upon criminal conviction in superior court. Defendant raises two issues: whether the trial court erred in (1) denying his motion

to dismiss; and (2) admitting the State's Exhibit 14 ("St.'s Ex. 14") as a certified court record for the jury to use in making a handwriting comparison to another letter from an unknown source. Upon review, we discern no error.

I.

¶ 2 On or about 14 December 2014, Elvira Esparza was the victim of home invasion and armed robbery in Alamance County, North Carolina. Defendant was charged in connection with these offenses against Esparza. In March of 2015, while those charges were active and pending, Esparza was a witness for the State's case against defendant.

¶ 3 On 30 March 2015, defendant was incarcerated at the Caswell County Detention Center. Stephanie Luck, a detention officer at the Caswell County Detention Center, testified that defendant handed her a handwritten letter while she was in "E pod" where defendant lived.

¶ 4 The letter read:

> Dear Ms. ESPARZA
>
> First and foremost, I pray that this honorable brief Letter finds you in the very best of health and spirits! This is the president of the Motorcycle gang "see-No-evil". Two of my biker members was sent to your Residence < [redacted] > one of my members supposely had bought some drugs from the food truck across from the Walmart on Grand hope dale Rd. It was told to me that the drugs that my member had bought – wasn't drugs! Anyway, I have found out – that your house was the wrong house! I'm asking you to foreget

> about the incident – Nobody didn't Lose anything or got hurt! once again, don't come to court, and this incident is completely forgotten. Thank you, and we are very sorry for the wrong House!
>
> Love is Love,
>
> President D.J./Peace

¶ 5 The letter is dated 30 March 2015. The words "don't come to court" are underlined twice, as is the last instance of the word "House." Drawn at the bottom of the letter is a "smiley face" image with "X X" eyes. The name written above the return address on the envelope is "Donald J. Riley," although a Donald Riley did not reside in E pod. Officer Luck also testified that inmates from separate pods did not have a way to access each other.

¶ 6 Lieutenant Susan Trost held a supervisory position at the Caswell County Jail in 2015. Lieutenant Trost confirmed that defendant and Donald Philip Riley, III, were not housed in the same pod in February or March of 2015, and that they did not have access to each other at that time. Lieutenant Trost testified that, while she did not have actual knowledge of the fact, the mail log did not show that defendant sent a letter to Donald Riley between January 2015 and October 2018.

¶ 7 Officer Luck gave the letter to Lieutenant Mabel Gunter of the Caswell County Sheriff's Office and noted the name on the return address did not match the name of defendant, who had handed her the letter. Lieutenant Gunter testified that Donald Philip Riley, III, was separated from defendant because they were co-defendants at

that time. Lieutenant Gunter further stated that, in the entire time the jail was open, she had never heard of a "kite" being successfully passed between pods. A "kite," Lieutenant Gunter testified, is a note or paper that inmates would try to pass between pods. After receiving the letter and noting Officer Luck's concerns, Lieutenant Gunter handed it to Captain Durden in administration for further investigation.

¶ 8 On 31 March 2015, Captain Durden handed the envelope containing the letter to Lieutenant Eugene Riddick, who at the time was Lieutenant over the Criminal Investigative Division at the Caswell County Sheriff's Office. Lieutenant Riddick entered the envelope and letter into evidence at the Sheriff's Office. Lieutenant Riddick testified he had worked on the cases against defendant in Caswell and Alamance counties, which were pending at the time. The witness Esparza was the victim in an incident related to the Alamance County charges. The Caswell County charges were related to a home invasion where the victim was Donald Riley, Jr.

¶ 9 On 15 December 2014, Riley, Jr., was the victim of a home invasion in which he was robbed at gunpoint and tied up. In February of 2015, while the case was pending, Riley, Jr., received a letter in an envelope stating it came from a correctional facility. The handwritten letter was signed "Respect [&] Peace Road=RaGe." The letter stated if Riley, Jr., went to court or contacted the police, they would put him on their "destroy list." Riley, Jr., told the deputy that visited his home that the handwriting in the letter looked like that of his son, Donald Philip Riley, III. Riley,

Jr., also testified he eventually learned Riley, III, orchestrated the armed robbery of his home.

¶ 10 Riley, III, testified against defendant in the armed robbery case involving Riley, Jr. Riley, III, stated he and defendant were both inmates at Caswell County Detention Center, but not housed in the same block. He also stated he never gave or attempted to give defendant any letters to be mailed, or for any other reason, while they were incarcerated.

¶ 11 At trial, Riley, III, testified he went by the nickname "D.J.," and it was his only nickname. Riley, III, was presented with both the letter to Esparza and to Riley, Jr., and he stated he had not written either of them. Riley, III, further testified his middle name is Philip; his middle initial is "P.", not "J.", as written on the envelope containing the letter to Esparza.

¶ 12 In August 2017, defendant sent a handwritten letter to Judge Osmond Smith (St.'s Ex. 14) requesting he be moved to a different detention facility. That letter read:

> Dear Honorable Smith August 14th, 2017
>
> Case numbers: 14-CRS50657, 14CRS50658, 14CRS50661, 14CRS50662, 15CRS16, 15CRS299
>
> I'm requesting for you to command for me to be returned back to Caswell County jurisdiction immediately! My so-called co-defendants has been separated from me in Caswell County Jail, from day one of me being arrested.

> Thank you very much for your honorable time and concern and assistances!!!
>
> Respectfully submitted,
>
> Harold Lee Williams, Jr.
>
> Harold Lee Williams, Jr. (signed)
>
> Defendant.

¶ 13 The letter was certified as part of the public record and entered into defendant's court file. At trial, the State introduced the letter to Judge Smith for the jury to compare the handwriting to the handwriting in the letters sent to Esparza and Riley, Jr. Defendant objected and argued, in part, that this document was authenticated as being from the court file, but not authenticated as to who wrote the document. Over defendant's objection, the trial court determined the letter to Judge Smith was a self-authenticated document recorded in the case that contained defendant's name, then-current address, signature, and the case numbers of the cases pending against him.

¶ 14 Defendant testified on his own behalf at trial. He confirmed that he had been charged in the case relating to Esparza, and that the case was still pending at that time. Defendant admitted he had been convicted of second degree kidnapping and felony breaking and entering in Caswell County on 26 October 2018.

¶ 15 Defendant denied writing either of the letters. He stated he never gave mail to, or received mail from, Officer Luck. Defendant testified his DNA sample and

fingerprints had been taken after a prior arrest, but no one had taken a handwriting sample from him in connection with this case. When asked about the content of the letters, defendant asserted he had never seen either the letter to Esparza or to Riley, Jr.

¶ 16 The State argued the letter to Judge Smith, as a certified court record with defendant's name on it, was a known sample. The State asked the jury to compare the handwriting on the letter to Judge Smith to the handwriting in the letters to Esparza and Riley, Jr. While requesting the comparison, the State stated the jury could examine these letters and "see it's the same handwriting." The State also asked the jury to consider the context of the letter to Esparza when deciding whether the wording of the letter was threatening. The jury acquitted defendant on the charge of intimidating a witness relating to Riley, Jr., and convicted him of intimidating a witness as to Esparza.

¶ 17 On 30 June 2021, the trial court found that defendant was a prior record level VI for felony sentencing purposes based on 21 prior record level points. It entered judgment against defendant, imposing an active sentence of 20 to 33 months, to begin at the expiration of the sentence imposed in Caswell County File No. 2014CRS50661. Defendant gave oral notice of appeal in open court.

II.

¶ 18 Defendant argues the trial court erred in denying his motion to dismiss the

second count of the indictment, felony intimidating a witness, where Esparza was the alleged victim. Specifically, defendant asserts the State failed to present substantial evidence that he personally threatened to cause Esparza bodily harm or violence. We disagree.

¶ 19 This Court reviews the trial court's denial of a motion to dismiss de novo. *State v. Mauer*, 202 N.C. App. 546, 549, 688 S.E.2d 774, 776 (2010). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quotation marks and citations omitted).

¶ 20 "When considering a motion to dismiss, the trial court must determine whether there is sufficient evidence of each essential element of the offenses charged or lesser included offenses, and whether the defendant was in fact the perpetrator." *State v. Wade*, 181 N.C. App. 295, 299, 639 S.E.2d 82, 86 (2007) (citation omitted). The applicable standard is well-established:

> "In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion. As to whether substantial evidence exists, the question for the trial court is not one of weight, but of the sufficiency of the evidence. In resolving this question, the trial court must examine the evidence in the light most advantageous to the State, drawing all reasonable inferences from the evidence in favor of the

> State's case. Moreover, "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. Mann, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (citations omitted), *cert. denied*, 537 U.S. 1005, 154 L. Ed. 2d 403 (2002). "If there is sufficient evidence to submit the case to the jury, the motion to dismiss must be denied." *Wade*, 181 N.C. App. at 299, 639 S.E.2d at 86 (citation omitted).

¶ 21 North Carolina General Statutes section 14-226(a) states:

> If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, the person shall be guilty of [intimidating or interfering with witnesses].

N.C. Gen. Stat. § 14-226(a) (2021).

¶ 22 In this case, count two of the indictment alleges defendant:

> did by threats attempt to deter and attempt to prevent Elvira Esparza from attending court by threatening to cause physical harm to the witness by saying "Don't come to court and this incident is completely forgotten". Elvira Esparza was acting as a witness in the case of State of North Carolina v. Harold Williams, in Alamance County Criminal Superior Court.

¶ 23 When an indictment is based upon a theory of threats, the State must prove defendant intimidated the witness "by means of threats, not by way of 'menaces or in any other manner[,]' as permitted by the statute." *State v. Braxton*, 183 N.C. App.

36, 43, 643 S.E.2d 637, 642 (2007) (alteration in original) (citation omitted). However, "[T]he words menace and coerce are defined as basically synonymous with 'threat.'" *State v. Williams*, 186 N.C. App. 233, 239, 650 S.E.2d 607, 610 (2007).

¶ 24 Defendant asserts the words "don't come to court and this incident is completely forgotten," could not reasonably be construed as a personal threat of bodily harm or violence. He relies on prior decisions of this Court such as *Braxton* and *Williams* in arguing the State failed to meet its burden upon a motion to dismiss. *See Braxton*, 183 N.C. App. at 44-45, 643 S.E.2d at 643 ("[D]efendant told [the witness] 'at least ten' times not to testify is not sufficient to show that defendant threatened her in any way during the numerous calls . . . ."); *see also Williams*, 186 N.C. App. at 239, 650 S.E.2d at 611 ("[D]efendant's letter nowhere hints at bodily harm or violence . . . , contains no cursing, vulgarity, or threatening language, and maintains a courteous tone throughout.").

¶ 25 Contrary to defendant's position, nothing in the statute requires defendant make a glaring, explicit threat, and precludes a juror from examining the written statement in context of the letter as a whole, and in light of the parties' prior relationship. *See Braxton*, 183 N.C. App. at 44, 643 S.E.2d at 643 (The jury could consider evidence of the defendant's prior "volatile and violent relationship" with the victim). The letter at issue implicitly references the prior crime at Esparza's house and lists her home address with specificity. It informs Esparza that the writer is the

president of the motorcycle gang and asserts that two of their gang members were sent to her home in the past. At the end of the letter, the word "House" is double underlined. Based on these portions of the letter, along with the emphasized demand, "don't come to court," followed by the statement "and this incident is completely forgotten," a reasonable juror could infer that the letter was making it clear that the writer knows Esparza's home address and can send people to her home again.

¶ 26 Based on the content of this letter, a reasonable juror could find defendant's statement was a threat to inflict bodily harm or violence upon the witness based on the totality of the circumstances. Thus, the motion to dismiss was properly denied. *See State v. Smith*, 40 N.C. App. 72, 79, 252 S.E.2d 535, 540 (1979) (emphasis in original) ("If the trial court determines that a reasonable inference of the defendant's guilt may be drawn from the evidence, it must deny the defendant's motion and send the case to the jury even though the evidence may also support reasonable inferences of the defendant's innocence.").

III.

¶ 27 Defendant argues the trial court erred by admitting St.'s Ex. 14 (letter to Judge Smith) as a certified court record and by publishing it to the jury to use as a known sample when making a handwriting comparison. We disagree.

¶ 28 A trial court's determination as to whether a document has been sufficiently authenticated is a question of law and reviewed de novo on appeal. *State v. Crawley*,

217 N.C. App. 509, 515, 719 S.E.2d 623, 637 (2011), *rev. denied,* 365 N.C. 553, 722 S.E.2d 607 (2012). In addition to error, defendant must demonstrate prejudice, or "a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." *State v. Turner*, 268 N.C. 225, 232, 150 S.E.2d 406, 411 (1966) (citation omitted).

¶ 29 "Generally, a writing must be authenticated before it is admissible into evidence." *Milner Hotels, Inc. v. Mecklenburg Hotel, Inc.*, 42 N.C. App. 179, 180, 256 S.E.2d 310, 311 (1979) (citation omitted). "A writing may be authenticated by the production of sufficient evidence from which the jury could find that the writing was either written or authorized by the person who the writing indicates was responsible for its contents." *Id.* at 180, 256 S.E.2d at 311 (citation omitted). It is well established that "the authorship and genuineness of letters, typewritten or other, may be proved by circumstantial evidence . . . ." *State v. Davis*, 203 N.C. 13, 28, 164 S.E. 737, 745 (1932) (citation omitted). "Once evidence from which the jury could find that the writing is genuine has been introduced, the writing becomes admissible." *Milner Hotels*, 42 N.C. App. at 181, 256 S.E.2d at 311. "However, before handwritings may be submitted to a jury for its comparison, the trial court must satisfy itself that there is enough similarity between the genuine handwriting and the disputed handwriting, such that the jury could reasonably infer that the disputed handwriting is also genuine." *State v. Owen*, 130 N.C. App. 505, 509, 503 S.E.2d 426, 429 (1998)

(quotation marks and citation omitted).

¶ 30 At trial, the State sought to introduce St.'s Ex. 14, a letter to Judge Smith dated 14 August 2017, as a self-authenticated known sample of defendant's handwriting. This letter bore the name and signature of Harold Lee Williams, Jr., and was stamped as a true copy from the Clerk of Superior Court Caswell County. Defendant objected, and argued, in part, that St.'s Ex. 14 is self-authenticating to the extent that it is a certified document from a court file; it is not however, self-authenticated as to who wrote the document. The trial court admitted St.'s Ex. 14 into evidence as a certified copy of a document in defendant's file, and therefore a self-authenticating public record, and permitted it to be published to the jury for the purposes of handwriting comparison.

¶ 31 "However, familiarity with one's handwriting is not the only method to authenticate a letter." *State v. Young*, 186 N.C. App. 343, 354, 651 S.E.2d 576, 583 (2007). Here, St.'s Ex. 14 was stamped as a certified public record and entered into defendant's file. In the letter, defendant requested that he be moved back to Caswell County and stated that he had been separated from his co-defendants since his arrest. The letter contained defendant's current location and the case numbers associated with six cases for which he was scheduled to stand trial. It was signed "Harold Lee Williams, Jr." Thus, the trial court was presented with sufficient evidence to support authentication of the letter as a sample of defendant's handwriting. The trial court

may look at circumstantial evidence to determine authenticity, such as whether the letter contains "intimate knowledge of the crime." *Id.*

IV.

¶ 32 For the foregoing reasons, we discern no error in this case.

NO ERROR.

Judges ZACHARY and JACKSON concur.

Report per Rule 30(e).