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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1005

Filed 2 January 2024

Wake County, Nos. 20-CRS-209043; 20-CRS-209180

STATE OF NORTH CAROLINA

v.

AARON O. FORREST

Appeal by defendant from judgments entered 3 March 2022 by Judge Rebecca W. Holt in Wake County Superior Court. Heard in the Court of Appeals 19 September 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Keith Clayton, for the State.

Richard J. Costanza for defendant-appellant.

THOMPSON, Judge.

In this criminal appeal, defendant asks this Court for a new trial, asserting that the trial court erred in 1) denying his motion to dismiss the charge of attempted discharge of a firearm into an occupied dwelling and 2) instructing the jury, over defendant's objection, that the doctrine of acting in concert applied to that charge. We

find no error on the part of the trial court, and accordingly we uphold the judgment entered upon defendant's convictions.

I. Factual Background and Procedural History

This case arises from events surrounding the murder of seventeen-year-old Jameisha Person on 2 June 2020 during a confrontation amongst her extended family members and others. The evidence adduced at trial tended to show the following: On 2 June 2020, the victim, multiple members of her family, including the victim's brother, Joshua Jenkins, and defendant, a decades-long friend of the family, gathered at Jameisha's home following a funeral wake. At the gathering, Jameisha's family learned that Jameisha's infant nephew, Royal, had suffered serious injuries while in the care of the child's father, Richard Steverson. Upon hearing this news, Jameisha and other members of the family formed a plan to confront Richard and retrieve Royal's siblings from Richard's care. The group traveled to Richard's home in at least two vehicles—one containing Jameisha, her sisters, and her mother; and the other containing Joshua, other men in Jameisha's family, and defendant.

When the two vehicles arrived at Richard's apartment, neither Richard nor Royal's siblings were there, but Richard's brother, Lawrence, was present. An argument and physical fight between Lawrence and Joshua ensued, after which Lawrence left Richard's apartment. Jameisha's family members and defendant then drove in their two vehicles to the home of Lawrensine Steverson, the mother of

Richard and Lawrence and the grandmother of Royal, correctly believing that Royal's siblings might be found at that location.

Upon arriving at the apartment complex where Lawrensine resided, Jameisha and other women in her vehicle exited the car and began yelling at Lawrensine as she stood on her third-floor balcony. Lawrensine refused to turn over Royal's siblings to Jameisha's family and informed them that the Wake County Department of Social Services had temporarily placed the children in Lawrensine's care following the report of Royal's injuries. As the verbal altercation continued, Joshua got out of the vehicle in which the men of Jameisha's group were traveling and began to assault Lawrensine's husband, who had come outside the apartment to try to get Jameisha's family to leave.

At the same time, Richard and Lawrence Steverson—Royal's father and uncle, respectively—arrived on the scene in a white Nissan Maxima, and Lawrence called out to Joshua in a threatening manner. In response, Joshua pulled out his gun and fired multiple shots. Defendant then grabbed a gun from Jameisha's father, exited their vehicle and also began to fire. The evidence was conflicting about the direction of the gunshots fired by Joshua, with some testimony being that Joshua shot into the ground while other testimony was that Joshua fired at the Nissan Maxima. No witness testified to seeing defendant shoot toward the Nissan Maxima although several witnesses testified that defendant fired his gun multiple times during the incident. As the gunfire erupted, Jameisha attempted to run to safety but was fatally

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struck in the back by a bullet. Defendant fled the scene on foot, while Jameisha's father, James Person, drove Joshua and another male family member to another apartment complex and dropped them off before returning to the scene of the shooting. Joshua and James were later arrested in connection with the shooting.

Defendant was eventually indicted for three offenses in connection to the events of 2 June 2020: discharging a firearm into an occupied vehicle, specifically, the 2013 Nissan Maxima occupied by the Steverson brothers; possession of a firearm by a felon, and first-degree murder. The matter came on for trial at the 21 February 2022 criminal session of Superior Court, Wake County. The State's theory of the case was that defendant was responsible for the gunshots fired into the Maxima, either because defendant personally fired shots intended to strike the car or because he had acted in concert with Joshua, who fired into the vehicle.¹ In addition to the facts recapped above, the State introduced evidence that six shell casings were recovered from the scene of Jameisha's murder and that the Maxima was found to have sustained "obvious damage to the front driver's side."

At the close of the State's case and again at the close of all the evidence, defendant moved to dismiss the charges against him: first-degree murder, possession of firearm by a felon, and discharging a firearm into occupied property. The trial court denied those motions.

¹ Further details from defendant's trial are discussed below as they are pertinent to our analysis.

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In addition to charging the jury on the three offenses for which defendant was indicted, the trial court gave the jury the option of finding defendant guilty of the lesser-included offense of attempted discharging of a firearm into an occupied vehicle:

First, that the defendant intended to commit discharging a firearm into an occupied vehicle. Discharging a firearm into an occupied vehicle is willfully and wantonly discharging a firearm into a vehicle while it is occupied by one or more persons, the defendant knowing it was occupied by one or more persons or having reasonable grounds to believe it was occupied by one or more persons.

And second, that at the time—let me start that over. And second, that at the time the defendant had this intent, the defendant performed an act which was calculated and designed to bring about discharging a firearm into an occupied vehicle but which fell short of the completed offense.

While the trial court instructed the jury on the theory of acting in concert as part of its charge on the completed offense of discharging a firearm into an occupied vehicle, the court did not repeat the acting in concert instruction when it charged the jury regarding the attempted version of that offense. However, on the fourth day of deliberations, the jury sent out a note asking whether the acting in concert doctrine applied to the attempted offense of discharging a firearm into property. The trial court instructed the jury that acting in concert did apply to the attempt charge, over defendant's objection.

On the following day, the jury returned verdicts finding defendant not guilty of first-degree murder, but guilty of possessing a firearm as a felon and attempted

discharge of a firearm into occupied property. The trial court imposed an active sentence of 33–49 months for the attempted discharging of a firearm into an occupied vehicle conviction and a consecutive active sentence of 25–39 months for the possession of a firearm by a felon conviction. Defendant gave notice of appeal in open court.

II. Analysis

On appeal, defendant makes two related arguments. First, he contends that the trial court erred in denying his motion to dismiss for insufficiency of the evidence the charge of attempted discharging a weapon into an occupied vehicle. Second, defendant argues that the trial court erred in instructing the jury that the doctrine of acting in concert applied to that charge. We find no merit in either of defendant's appellate positions.

A. Motion to dismiss

Defendant first contends that the trial court erred in denying his motion to dismiss the charge of attempted discharging a firearm into an occupied vehicle. We are not persuaded.

The standard of review applicable here is well established. “Upon defendant’s motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, *or of a lesser offense included therein*, and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Baldwin*, 276 N.C. App. 368, 372, 856 S.E.2d

897, 901 (quoting *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000)) (emphasis added), *disc. review denied*, 379 N.C. 148, 863 S.E.2d 616 (2021).

Substantial evidence is

that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion. In the course of making this inquiry, the reviewing court must view the evidence in the light most favorable to the State, with the State being entitled to every reasonable intendment and every reasonable inference to be drawn therefrom. As long as the record contains substantial evidence, whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied. Whether the State presented substantial evidence of each essential element of the offense is a question of law, so, accordingly, we review the denial of a motion to dismiss de novo.

State v. Elder, 383 N.C. 578, 586, 881 S.E.2d 227, 234 (2022) (citations, quotation marks, and brackets omitted).

The underlying charge at issue here is discharging a firearm into occupied property, the elements of which are “(1) willfully and wantonly discharging (2) a firearm (3) into property (4) while it is occupied.” *State v. Hagans*, 188 N.C. App. 799, 804, 656 S.E.2d 704, 707 (citations and internal quotation marks omitted), *disc. review denied*, 362 N.C. 511, 668 S.E.2d 344 (2008). In turn, “[t]he elements of an attempt to commit a 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. Baker*, 369 N.C. 586, 595, 799 S.E.2d

816, 822 (2017) (citations and internal quotation marks omitted). Moreover, in *Baker* our Supreme Court clarified that, “ ‘[a]lthough the crime of attempt is sometimes defined as if failure were an essential element, the modern view is that a defendant may be convicted on a charge of attempt even if it is shown that the crime was completed.’ ” *Id.* at 597, 799 S.E.2d at 823 (quoting 2 Wayne R. LaFave, *Substantive Criminal Law* § 11.5, at 230 (2d ed. 2003)).

Finally, a defendant acts in concert with another when he

is present at the scene of the crime and acts together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime. Under this theory, two or more persons, who joined together in a purpose to commit a crime, are responsible for the unlawful acts committed by the other person, so long as those acts are committed in furtherance of the crime’s common purpose.

State v. Baldwin, 276 N.C. App. 368, 373, 856 S.E.2d 897, 902, *disc. review denied*, 379 N.C. 148, 863 S.E.2d 616 (2021).

Defendant first asserts that there was insufficient evidence that defendant *individually* committed either the attempted or completed offense of discharging a firearm into occupied property for the trial court to submit this offense to the jury. Defendant draws to our attention the fact that no witness testified to seeing defendant fire his weapon at the Maxima or indeed was able to say in what direction defendant may have fired. Thus, defendant represents that even in the “light most favorable to the State, the State failed to show [that d]efendant personally took action

that was calculated and designed to discharge a firearm into the Nissan Maxima, [but] which *fell short of the completed offense*. Instead, defendant contends that all of the evidence indicated Joshua alone fired into the vehicle.” (Emphasis added).

Relatedly, defendant further argues that because the evidence was that Joshua committed the completed offense of discharging a firearm into occupied property, the jury, even if it believed defendant acted in concert with Joshua, could only have convicted defendant of the *completed* offense under that theory and not of the *attempted* offense. We find defendant’s contention unpersuasive given that “a defendant may be convicted on a charge of attempt even if it is shown that the crime was completed,” *Baker*, 369 N.C. at 597, 799 S.E.2d at 823 (citation and internal quotation marks omitted), and moreover, a defendant’s motion to dismiss should be denied if the State has produced evidence, *inter alia*, “of each essential element of the offense charged, *or of a lesser offense included therein*.” *Baldwin*, 276 N.C. App. at 372, 856 S.E.2d at 901. *See also State v. Primus*, 227 N.C. App. 428, 430–32, 742 S.E.2d 310, 312 (2013) (finding no error by the trial court in its denial of a motion to dismiss a charge of attempted larceny on the basis that the State’s evidence showed that the defendant’s actions satisfied all of the elements of the *completed* offense, because “the completed commission of a crime must of necessity include an attempt to commit the crime. . . . [and] nothing in the philosophy of juridical science requires that an attempt must fail in order to receive recognition”) (quoting *State v. Canup*,

117 N.C. App. 424, 428, 451 S.E.2d 9, 11 (1994) (other citations and internal quotation marks omitted).

We also reject defendant's assertion that in order to convict defendant "[t]he jury would have to engage in speculation and conjecture to conclude [d]efendant personally attempted to discharge a firearm into the Nissan Maxima," citing *State v. Malloy*, 309 N.C. 176, 179, 305 S.E.2d 718, 720 (1983) for the proposition that a motion to dismiss must be slowed if the evidence raises only a "suspicion or conjecture" of the defendant's guilt. We hold that the evidence in question—to wit: that defendant fired a gun during the incident in the parking lot in an unknown direction and that the Maxima suffered damage from gunshots during that incident—*could* support a reasonable inference by a juror that defendant fired or attempted to fire his weapon into the car. The admission by Joshua that he individually committed the completed offense does not mean that defendant may not have also discharged his gun into the occupied car or attempted to do so, and whether defendant in fact shot at, or attempted to shoot at, the Maxima are determinations reserved solely for the jury. *See State v. Moore*, 366 N.C. 100, 108, 726 S.E.2d 168, 174 (2012) (emphasizing that it is "[t]he jury's role . . . to weigh evidence, assess witness credibility, assign probative value to the evidence and testimony, and determine what the evidence proves or fails to prove"). The evidence here was sufficient to send the issue of discharging a firearm into occupied property, and accordingly, the trial court did not err in denying defendant's motions to dismiss.

B. Jury instructions

Defendant next argues that the trial court erred in instructing the jury that the doctrine of acting in concert applied to attempted discharging of a firearm into an occupied vehicle. Specifically, defendant references his previous argument regarding the denial of his motions to dismiss and contends that “the concerted action instruction would have been appropriate for the attempt-based offense only if there was evidence showing Joshua or [d]efendant failed in their endeavor to discharge a firearm into the Nissan Maxima.”²

While we agree with defendant that, “[w]here jury instructions are given without supporting evidence, a new trial is required,” *State v. Porter*, 340 N.C. 320, 331, 457 S.E.2d 716, 721 (1995), as discussed in section II-A of this opinion, evidence that supports sending a charge of a completed offense to the jury also supports submission to the jury of the attempted offense. Defendant does not cite any authority or make any argument suggesting that giving an instruction on acting in concert, which is simply a theory by which a defendant may be held criminally responsible for an offense where all of the elements of the offense are proved by the State, *see Baldwin*, 276 N.C. App. at 373, 856 S.E.2d at 902, would cause us to apply the above-discussed precedent concerning attempted versus completed offenses differently.

² We note that this is defendant’s only argument of error in connection to the jury instruction challenged here, and we emphasize that defendant does not raise any appellate argument regarding the *timing* of the instruction.

Indeed, “it is the duty of the trial court to instruct the jury on all of the substantive features of a case.” *State v. Loftin*, 322 N.C. 375, 381, 368 S.E.2d 613, 617 (1998) (citations omitted). Here, because the trial court “present[ed] the law of the case in such manner as to leave no reasonable cause to believe the jury was misled or misinformed,” *State v. McGee*, 234 N.C. App. 285, 287, 758 S.E.2d 661, 663 (citations and internal quotation marks omitted), *disc. review denied*, 367 N.C. 791, 766 S.E.2d 645 (2014), we hold that the trial court did not err in instructing the jury regarding the application of the acting in concert doctrine.

III. Conclusion

For the reasons discussed herein, we conclude that defendant has not demonstrated error in his trial.

NO ERROR.

Judges HAMPSON and STADING concur.

Report per Rule 30(e).